Supreme Court, U.S.
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No. ___
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

HENRY LEE HUNT,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF NORTH CAROLINA,
ROBESON COUNTY

PETITION FOR WRIT OF CERTIORARI

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July 9, 1997

134 pp

Questions Presented

Petitioner Henry Lee Hunt was convicted in a North Carolina court of the first-degree murders of Jackie Ransom and Larry Jones and was sentenced to death. At trial, the State's theory as to why petitioner killed Larry Jones was that Larry Jones had been telling the police that petitioner killed Jackie Ransom. At a subsequent hearing on petitioner's state habeas petition, however, the two law enforcement officers who actually interviewed Larry Jones in the week following Jackie Ransom's death testified that Larry Jones never said anything that implicated petitioner in Jackie Ransom's murder, thus directly and substantially undermining the State's proferred motive for the murder of Larry Jones. In violation of its constitutional obligations under *Brady* v. *Maryland*, 373 U.S. 83 (1963), the State never disclosed this favorable and clearly material evidence to petitioner's court-appointed trial lawyers. The North Carolina Superior Court for Robeson County nevertheless rejected petitioner's *Brady* claim, holding that "Jones' failure to name [petitioner] in discussions with investigators is not exculpatory evidence" because "[i]t does not tend to show that [petitioner] was not the killer." The questions presented by this petition are:

> Whether the North Carolina Superior Court erred in holding that the suppressed evidence was not favorable to petitioner, and thus did not have to be disclosed by the State to petitioner under *Brady*, because that evidence alone does not show that petitioner "was not the killer."
>
> Whether the North Carolina Superior Court patently erred in rejecting petitioner's *Brady* claim.

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v.

STATE OF NORTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NORTH CAROLINA, ROBESON COUNTY

Petitioner Henry Lee Hunt respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of North Carolina, Robeson County, entered in this action on September 16, 1996.

Opinion and Order Below

The opinion of the Superior Court of North Carolina, Robeson County, is unreported and is reprinted in the appendix hereto at pages 1a through 99a. The Order of the Supreme Court of North Carolina denying petitioner's petition for a writ of certiorari is unreported and is reprinted in the appendix hereto at page 100a.

Jurisdiction

The Superior Court of North Carolina, Robeson County, entered its judgment in this action on September 16, 1996. On April 10, 1997, the Supreme Court of North Carolina denied

petitioner's timely petition for a writ of certiorari. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(a).

Constitutional Provision Involved

This case involves petitioner's right to a fair trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Due Process Clause provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV, § 1.

Statement of the Case

In December 1985, petitioner Henry Lee Hunt was convicted of two counts of first-degree murder and sentenced to death. On November 3, 1988, the Supreme Court of North Carolina affirmed petitioner's convictions and death sentences. *See North Carolina* v. *Hunt*, 373 S.E.2d 400 (N.C. 1988). This Court subsequently granted petitioner's petition for a writ of certiorari, vacated his death sentences and remanded the cases to the Supreme Court of North Carolina for further consideration in light of *McKoy* v. *North Carolina*, 494 U.S. 433 (1990). *See Hunt* v. *North Carolina*, 494 U.S. 1022 (1990). On remand, the Supreme Court of North Carolina affirmed petitioner's death sentences, holding that the *McKoy* error was harmless beyond a reasonable doubt because petitioner's court-appointed trial counsel had introduced no mitigating evidence during the penalty phase of the trial. *See North Carolina* v. *Hunt*, 411 S.E.2d 806 (N.C.), *cert. denied*, 505 U.S. 1226 (1992).

On December 3, 1992, petitioner filed a Motion for Appropriate Relief ("MAR") in the North Carolina Superior Court for Robeson County pursuant to N.C. GEN. STAT. § 15A-1411 *et seq.*, alleging, among other constitutional violations, a claim under *Brady* v. *Maryland*, 373 U.S. 83 (1963). The Superior Court conducted an evidentiary hearing on petitioner's MAR that began on September 12, 1994 and ended on Novem-

ber 30, 1994. At that hearing, the two law enforcement officers principally responsible for investigating the murders of Jackie Ransom and Larry Jones admitted that the State possessed information that completely undermined its theory as to why petitioner would have killed Larry Jones. Nevertheless, in clear violation of its constitutional duty under *Brady*, the State never disclosed that exculpatory information to petitioner's court-appointed trial lawyers.

From the outset of the case, the State's theory was that Rogers Locklear and his wife Dottie Ransom (a bigamist) had hired A.R. Barnes to kill Jackie Ransom, Dottie Ransom's other husband, in order to collect the proceeds of a life insurance policy that Dottie Ransom had recently taken out on Jackie Ransom's life. According to the State, Elwell Barnes, A.R. Barnes' younger brother, subsequently volunteered out of the blue that he and petitioner would carry out the contract instead of A.R. Barnes. Thus, even though Rogers Locklear and Dottie Ransom had hired A.R. Barnes to commit the murder — and A.R. Barnes later confessed to the murder after failing a lie detector test — the State asserted that petitioner actually killed Jackie Ransom.

The State further claimed that petitioner also killed Larry Jones one week later because Larry Jones had been telling the police that petitioner killed Jackie Ransom. Indeed, newspaper reports on the day that petitioner was arrested quoted law enforcement officers as saying that petitioner killed Larry Jones because Larry Jones would identify petitioner as Jackie Ransom's killer. As evidence that Larry Jones had been making such statements to the police, the State at trial offered testimony from Bernice Cummings, petitioner's girlfriend at the time of the murders but who, by the time of trial, was dating someone else. Bernice Cummings testified that petitioner said in her presence that "Larry Jones was out running his damn mouth" about the Ransom murder and that "he were [sic] going to have to put a stop to his damn mouth." (App. at 102a.) Bernise Cummings' testimony was buttressed by testimony from law enforcement

officers that they had been speaking with Larry Jones about Jackie Ransom's murder and had interviewed Larry Jones on the day he died. (*See* App. at 8a, 66a-67a.)

In direct contrast to Bernice Cummings' trial testimony — and to the trial testimony they gave to reinforce her story — both of the law enforcement officers who actually interviewed Larry Jones made clear at the MAR hearing that Larry Jones never said *anything* that implicated petitioner in Jackie Ransom's death. Mike Stogner of the Lumberton Police Department ("LPD"), who was in charge of the Ransom investigation, testified that Larry Jones "was telling us he would find out . . . who did it. . . . He never said anyone did it. He never.gave us a name of who did the murder." (App. at 113a.) Lee Sampson of the State Bureau of Investigation, which assisted the LPD in both the Ransom and Jones investigations, corroborated Mike Stogner's testimony. When asked what useful information Larry Jones provided, Lee Sampson replied:

> I don't remember him telling us anything. We just, since he was in that environment with the family there, thought maybe he might hear something either on the street or talking with Rogers' family. . . . Just sort of a confidential informant.

(App. at 109a.)

Although such information was completely at odds with the State's theory as to why petitioner would have killed Larry Jones, the State failed to provide petitioner's court-appointed trial lawyers with the notes taken by Mike Stogner and Lee Sampson of their discussions with Larry Jones. Even apart from those notes, the State failed to disclose to petitioner's court-appointed trial lawyers the simple fact that Larry Jones never once implicated petitioner in the killing of Jackie Ransom. Even worse, the State predicated a major aspect of its case on an assertion that it knew, or should have known, was untrue.

The suppressed evidence concerning Larry Jones' discussions with police would have been even more compelling when considered together with other evidence available to petitioner's court-appointed trial lawyers. For example, Aggie Nora Hunt, petitioner's sister who was renting a room to Larry Jones at the time of his murder, testified at the MAR hearing that Larry Jones was telling people that Rogers Locklear, not petitioner, killed Jackie Ransom. (App. at 115a.)[1]

The suppressed evidence also could have been used to exonerate petitioner of the murder of Jackie Ransom. At the time he was killed, Larry Jones was dating Minnie Locklear, one of Rogers Locklear's daughters, and was spending a significant amount of time at the Locklears' house. In view of his relationship with Minnie Locklear, Larry Jones was in a good position to hear about Jackie Ransom's murder from the people who planned it — Rogers Locklear and Dottie Ransom. Consequently, his failure to mention petitioner's name strongly suggests that petitioner was not involved in the murder of Jackie Ransom.

On September 16, 1996, the North Carolina Superior Court for Robeson County denied petitioner's MAR. The Superior Court rejected petitioner's claim under *Brady* in the following paragraph:

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[1] That Aggie Nora Hunt did not testify at trial at all was (together with numerous other failings) the subject of a claim by petitioner in his MAR that he did not receive constitutionally adequate legal assistance from his court-appointed trial lawyers. For purposes of analyzing petitioner's *Brady* claim, however, this Court must presume that the exculpatory information would have been turned over to competent defense counsel. *See United States* v. *Bagley*, 473 U.S. 667, 676 (1985) ("evidence is 'evidence favorable to an accused' so that, *if disclosed and used effectively*, it may make the difference between conviction and acquittal") (emphasis added and citation omitted); *Kyles* v. *Whitley*, 115 S. Ct. 1555, 1569 (1995) ("disclosure of the suppressed evidence to *competent counsel* would have made a different result reasonably probable") (emphasis added).

> 29. At the close of the MAR hearing, MAR counsel moved to amend the claim to include the State's failure to disclose evidence that Jones never told law enforcement officers [petitioner] killed Ransom. The Court concludes this is not exculpatory evidence under *Brady v. Maryland*, 373 U.S. 831 (1963). Moreover, the trial attorneys knew from interviewing Aggie Nora Hunt that she would say Jones told her Locklear was involved in Ransom's murder. This was consistent with the State's case, Locklear was involved. Cummings testified that [petitioner] was angered that Jones was running his mouth about both the Evers larceny and Ransom murder. Jones' failure to name [petitioner] in discussions with investigators is not exculpatory evidence. It does not tend to show [petitioner] was not the killer. Under the facts of this case, the information Jones was providing investigators provided a motive for [petitioner] to murder Jones. Consequently, the evidence is inculpatory. The amended *Brady* claim is meritless and denied.

(App. at 94a-95a.)[2]

On November 18, 1996, petitioner filed a petition for a writ of certiorari with the Supreme Court of North Carolina, which was denied on April 10, 1997. (App. at 100a.) This petition followed.

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[2] The Superior Court's conclusion that the suppressed evidence is "not exculpatory" is inconsistent with its earlier remarks at the MAR hearing. In requiring the State to disclose to petitioner's MAR counsel Lee Sampson's notes of his discussions with Larry Jones, the Court noted that petitioner "is not mentioned . . . in any way" in the notes, that "a number of the — of the people who have been talked about [during the MAR hearing], however, are mentioned here," and that, as a result, "there might be something that someone might point out that they feel is exculpatory." (App. at 110a.)

Reasons for Granting the Writ

I.

The Superior Court's Holding That the Suppressed Evidence Was Not Favorable to Petitioner Conflicts with Decisions of This Court.

In *Brady* v. *Maryland*, 373 U.S. 83, 87 (1963), this Court held that the State's suppression of "evidence favorable to an accused" violates the Due Process Clause "where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution." *Accord United States* v. *Bagley*, 473 U.S. 667, 674 (1985) ("The holding in *Brady* v. *Maryland* requires disclosure only of evidence that is both favorable to the accused and 'material either to guilt or to punishment.'"). The State's duty to disclose evidence favorable to a defendant applies regardless of whether the defendant makes a specific request for such evidence. *See id.* at 682; *United States* v. *Agurs*, 427 U.S. 97, 106-07 (1976). As this Court explained, "[t]he *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur." *Bagley*, 473 U.S. at 675.

In this case, the Superior Court rejected petitioner's *Brady* claim on the ground that "Jones' failure to name [petitioner] in discussions with investigators is not exculpatory evidence." (App ata.) The Superior Court concluded that the suppressed evidence was not exculpatory under *Brady* because the evidence "does not tend to show [petitioner] was not the killer." (App at 95a.) In so holding, the Superior Court took much too narrow a view of "evidence favorable to the accused," thus creating a clear conflict with this Court's decisions construing the *Brady* rule. This Court should grant certiorari to correct this clearly

erroneous construction of the law and thereby ensure that a miscarriage of justice does not occur.

Only in an Alice in Wonderland world could evidence of Larry Jones' failure to implicate petitioner in the murder of Jackie Ransom be characterized as "not exculpatory evidence," much less as "inculpatory" evidence as the Superior Court found. The fact that Larry Jones never once suggested to the police that petitioner was involved in killing Jackie Ransom is flatly inconsistent with the State's theory as to why petitioner would have killed Larry Jones. It also corroborates Aggie Nora Hunt's statement that Larry Jones was instead saying that Rogers Locklear killed Jackie Ransom. Moreover, the State did not dispute that Rogers Locklear had hired someone other than petitioner to kill Jackie Ransom and that Rogers Locklear and the contract killer were seen together looking for Jackie Ransom in the days immediately preceding Jackie Ransom's murder. The suppressed evidence thus also undercuts the State's inherently implausible theory that petitioner was the "subcontractor" of the Jackie Ransom killing.

The Superior Court apparently adopted the view that because Larry Jones was talking to law enforcement officers and because petitioner knew that, petitioner had a motive to kill Larry Jones. Even under this view, one cannot fairly evaluate the evidence without knowing what Larry Jones actually told the police, and one cannot rationally conclude that Larry Jones' complete failure to implicate petitioner in the death of Jackie Ransom is *in*culpatory.

Moreover, just because Larry Jones' failure to implicate petitioner, standing alone, does not *definitively establish* that petitioner "was not the killer" does not mean that it is "not exculpatory evidence." As this Court stated in *Kyles* v. *Whitley*, 115 S. Ct. 1555, 1566 (1995), "[a] defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." To show a *Brady* violation, a defendant instead

simply must show that the undisclosed, favorable evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* Evidence that completely undermines petitioner's alleged motive for the murder of Larry Jones, casts doubt on his involvement in the murder of Jackie Ransom and bolsters the testimony of potential defense witnesses like Aggie Nora Hunt is certainly sufficient to undermine confidence in the verdict.

This Court also has made clear that "[i]mpeachment evidence . . ., as well as exculpatory evidence, falls within the *Brady* rule." *Bagley*, 473 U.S. at 676. As this Court explained in *Bagley*, impeachment evidence is "evidence favorable to the accused" because, "if disclosed and used effectively, it may make the difference between conviction and acquittal." *Id.* The Superior Court's failure to recognize that "evidence favorable to the accused" includes impeachment evidence is directly contrary to this Court's decision in *Bagley*. The suppressed evidence in this case, had it been disclosed and used effectively (as it presumably would have been), could have been used to impeach Bernice Cummings, one of the State's star witnesses, possibly making the difference between conviction and acquittal.

II.

The Superior Court Patently Erred in Rejecting Petitioner's *Brady* Claim.

This Court's "'duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.'" *Kyles*, 115 S. Ct. at 1560 (quoting *Burger* v. *Kemp*, 483 U.S. 776, 785 (1987)). In this case, "disclosure of the suppressed evidence to competent counsel would have made a different result reasonably possible." *Id.* The Superior Court thus patently erred in rejecting petitioner's *Brady* claim.

As noted above, the suppressed evidence was clearly favorable to petitioner. *First*, evidence that Larry Jones never

once suggested to the police that petitioner was involved in the murder of Jackie Ransom directly undermines the State's theory as to why petitioner would have killed Larry Jones. *Second*, such evidence also bolsters the testimony of potential defense witnesses like Aggie Nora Hunt, who testified at the MAR hearing, and would have testified at trial, that Larry Jones was instead saying that Rogers Locklear killed Jackie Ransom. *Third*, the suppressed evidence could have been used to impeach the credibility of Bernice Cummings, the State's only evidence of what Larry Jones was allegedly telling the police. *Fourth*, Larry Jones' failure even to mention petitioner's name in his discussions with police tends to exonerate petitioner of the murder of Jackie Ransom because Larry Jones, at the time he was killed, was seeing Minnie Locklear, Rogers Locklear's daughter, and hence was in close proximity with the people who, even under the State's theory of the case, actually planned the murder of Jackie Ransom — Rogers Locklear and Dottie Ransom.

Because the Superior Court concluded that the suppressed evidence was not exculpatory, it never addressed the materiality of that evidence. Where the undisclosed evidence demonstrates that the State introduced trial testimony that it knew, or should have known, was false, the State is held to "a strict standard of materiality." *Agurs*, 427 U.S. at 104. In those cases, the verdict "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Id.* at 103. In contrast, where the undisclosed evidence is favorable to the accused, but does not suggest that the State knowingly used false testimony, the verdict must be set aside "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.*

The suppressed evidence in this case was clearly material under either standard of materiality. As an initial matter, the suppressed evidence suggests that the State introduced trial testimony from Bernice Cummings that it knew, or should have known, was false.[3] Bernice Cummings testified at trial that Larry Jones had been telling the police that petitioner killed Jackie Ransom. Because the testimony of the law enforcement officers at the MAR hearing clearly demonstrates that Larry Jones never told them that — and the State can be presumed to know as much — one is left with the inescapable conclusion that the State knew, or should have known, that Bernice Cummings' trial testimony was false. Holding the State to "a strict standard of materiality," there is a "reasonable likelihood that the false testimony could have affected the judgment of the jury," since Bernice Cummings' false testimony provided the jury with the only plausible motive for why petitioner would have killed Larry Jones. *Agurs*, 427 U.S. at 103.

Even if the State did not knowingly use false testimony, there is still a "reasonable probability" that the result of the trial would have been different had petitioner's court-appointed trial counsel been given the notes taken by Mike Stogner and Lee Sampson of their discussions with Larry Jones. In assessing whether such a reasonable probability exists, "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles*, 115 S. Ct. at 1566. Had the suppressed evidence been disclosed, not only would the proffered motive for petitioner to have killed Larry Jones have been shown to be fallacious, but the credibility of Bernice Cummings on an issue

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[3] The suppressed evidence also suggests that the State, in offering testimony from law enforcement officers about their close work with Larry Jones on the Ransom case, urged the jury to make inferences that the State knew were inconsistent with the true facts.

central to the State's entire case also would have been thrown seriously into doubt. "[F]airness cannot be stretched to the point of calling this a fair trial." *Id.* at 1575.

In short, petitioner did not receive a fair trial as a result of the State's failure to disclose exculpatory and impeachment evidence in violation of its constitutional obligations under *Brady*. The State's only proffered motive for petitioner to kill Larry Jones — and a recurrent theme in the State's trial presentation — was that Larry Jones was eliminated as a prospective witness against petitioner. The State's failure to turn over to petitioner's court-appointed trial lawyers documents that totally debunked that theory undermines confidence in the outcome of the entire trial. To paraphrase this Court's decision in *Kyles*, "confidence that the verdict would not have been unaffected cannot survive when the suppressed evidence would have entitled a jury" to reject the State's proffered motive for the murder of Larry Jones. *Id.*

Conclusion

For the foregoing reasons, this Court should issue a writ of certiorari to review the judgment of the Superior Court of North Carolina, Robeson County, denying petitioner's MAR.

Respectfully submitted,

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July 9, 1997

APPENDIX

IN THE

General Court of Justice

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA, *Petitioner*,

v.

HENRY LEE HUNT, *Respondent*.

ORDER DENYING MOTION FOR APPROPRIATE RELIEF

This matter came on for evidentiary hearing on September 30, 1994, on Hunt's Motion for Appropriate Relief [hereinafter "MAR"] filed in Robeson County Superior Court on December 3, 1992. Hunt was present at all stages of this hearing and represented by Messrs. D. Stuart Meiklejohn and Steven L. Holley, Attorneys at Law, Sullivan & Cromwell, 125 Broad Street, New York, New York 10004 and Mr. James R. Parish, Attorney at Law, 343 Person Street, Fayetteville, North Carolina. Special Deputy Attorney General G. Patrick Murphy, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602 represented the State during the hearing. The Court, after hearing the evidence presented, making credibility determinations, and reviewing the MAR, clerk's file in this case, exhibits admitted at the hearing, briefs submitted and arguments of the parties, makes the following Findings of Fact and Conclusions of Law.

Procedural History

1. The sequence of events which gave rise to this hearing are as follows:

The body of Jackie Ray Ransom [hereinafter "Ransom"] was discovered in Lumberton on September 9, 1984. A subsequent

autopsy revealed Ransom died from a single gunshot wound to his head. The body of Larry Jones [hereinafter "Jones"] was discovered in a shallow grave near Fairmont on October 1, 1984. An autopsy and investigation revealed Jones died from multiple gunshot wounds to the head and body on the night of September 14, 1984. Indictments charging Hunt also known as "Buck" and/or "Mulehead", with first-degree murder arising from the deaths of Ransom and Jones were returned by the grand jury on May 28, 1985. Mr. Angus B. Thompson, Jr. [hereinafter "Thompson"] and Mr. H. Mitchell Baker, III [hereinafter "Baker"] were appointed to represent Hunt.

2. Hunt's charges were joined with those of co-defendants Elwell "Babe" Barnes and Exonie "A.R." Barnes for trial. The cases were tried before the Honorable Giles Clark and a jury at the November 18, 1995 Session of Superior Court, Robeson County. Hunt was convicted of the two first-degree murder charges on December 17, 1985. Following a sentencing proceeding pursuant to N.C.G.S. § 15A-2000, the jury recommended death sentences for both murders.

3. Thompson and Baker were appointed to handle Hunt's appeal. On direct appeal, the Supreme Court of North Carolina found no error related to Hunt's convictions or judgments. State v. Hunt, 323 N.C. 407, 373 S.E.2d 400 (1988). Hunt filed a petition for writ of certiorari in the United States Supreme Court. Certiorari was granted, the judgments vacated and the case remanded to the State Supreme Court for harmless error review of the penalty phase unanimity instruction. Hunt v. North Carolina, 494 U.S. 1022, 110 S.Ct. 1464, 108 L.Ed.2d 602 (1990). On remand, the Supreme Court of North Carolina found the unanimity instruction at penalty phase harmless beyond a reasonable doubt and reinstated the judgments. State v. Hunt, 330 N.C. 501, 411 S.E.2d 806, cert. denied, 112 S.Ct. 3045, 120 L.Ed.2d 913 (1992).

4. On December 3, 1992, Hunt filed the MAR which is the subject of this Order. Hunt's MAR raised the following claims:

I. A Blanket Claim of Overall Ineffective Assistance of Counsel.

II. Ineffective Assistance of Counsel At Sentencing Phase Alleging:

A. Trial counsel failed to develop and present mitigating evidence in support of statutory and non-statutory mitigating circumstances;

B. Mr. Thompson's closing argument in the sentencing phase was prejudicial;

C. Trial counsel failed to object to improper statements by the prosecutor; failed to move to sever the sentencing hearings of Hunt and Barnes; failed to argue in support of the defendant's objection to introduction of his conviction for dynamiting a dwelling house; and, failed to object to certain instructions at the penalty phase.

III. Improper Joinder of Hunt's Cases With Elwell and A.R. Barnes.

IV. The State Failed to Disclose Alleged Exculpatory Evidence.

V. The Prosecutor Made Improper and Prejudicial Arguments During the Guilt Phase.

VI. Racial Discrimination in the Selection of the Grand Jury Foreman and In the Selection of the Grand and Petite Juries.

VII. The Jury in Hunt's Case Was Improperly Death-Qualified.

VIII. Hunt's Constitutional and Other Rights Were Violated by the Absence of Relief on Pre-Trial Motions and Other Pre-Trial Omissions Including:

1. Counsel's failure to file a motion for an expert in psychiatry and failure to make effective use of his private investigators;
2. Counsel failed to ascertain whether the prosecution had complied fully with the defendant's discovery request and motion;
3. Counsel failed to move for an order to provide funds for the attendance of essential witnesses at trial;
4. Counsel failed to take steps to have bench conferences and in-chamber conferences recorded;
5. Counsel failed to make any motions with respect to the constitutionality of North Carolina's death penalty statute;
6. Counsel failed to make the necessary factual and legal showing which would have permitted the trial court to grant Hunt's motion for a change of venue;
7. Counsel failed to move for a continuance to allow pre-trial publicity to subside;
8. The trial court's denial of Hunt's motions for individual *voir dire* and jury sequestration;
9. The trial court's denial of Hunt's motion to sequester the jury and counsel's failure to renew the motion;
10. The trial court's denial of Hunt's motion for grand jury information; and,
11. Trial counsel's failure to move for sequestration of witnesses.

IX. The Trial Court Erred By:

1. Denying counsel's request to impeach and lead an adverse witness;
2. Improperly admitting hearsay;
3. Improperly admitting gory photographs;
4. Improperly allowing the State to introduce evidence regarding shovels.

X. The Trial Court Improperly Instructed The Jury at Penalty Phase.

XI. Ineffective Assistance of Counsel on Appeal.

XII. The Imposition of the Death Penalty in This Case is Not Warranted Because Counsel's Ineffective Assistance at Sentencing Phase Prohibited the Supreme Court to Perform Meaningfully Its Statutorily Mandated Review.

XIII. *McKoy* Error at the Sentencing Phase Entitles Hunt to a New Sentencing Hearing.

5. The State filed a motion for partial summary judgment alleging certain claims in the MAR were procedurally barred pursuant to N.C.G.S. § 15A-1419. The Court entered an Order on June 2, 1994 finding the following claims procedurally barred: Claim III, Claim V, Claim VI, Claim VII, Claim VIII(2),(3),(4),(5),(6),(7),(8),(9), Claim IX(2), Claim X, Claim XII, and Claim XIII. Hunt's petition for writ of certiorari to review the Court's June 2, 1994 Order was denied by the Supreme Court on August 10, 1994. *State* v. *Hunt*, 336 N.C. 783, 447 S.E.2d 436 (1994). Hunt's MAR came on for hearing on September 30, 1994.

Evidence at Hunt's Trial

6. The State's evidence at Hunt's trial is succinctly summarized in Justice Webb's opinion for the Court dealing with Hunt's direct appeal.

Evidence at the trial tended to show that Dottie Locklear Ransom had first married Rogers Locklear. Locklear was a construction worker and often worked out of town for several days at a time. Dottie began seeing Jackie Ransom while Locklear was out of town. She eventually married him, although she never divorced Locklear. Ransom began living with her while Locklear was out of town, and would leave the house when it was time for Locklear to return.

In July 1984, Dottie asked Locklear about the possibility of insuring Ransom's life and then having him killed. She wanted to buy a trailer and a cafe. On 3 August 1984 she purchased a $25,000 life insurance policy. She asked the agent whether, if Ransom were killed in a fight, she would be entitled to double indemnity for accidental death.

Dottie asked Locklear to find a hit man to kill Ransom. Locklear asked his brother Harry to run over Ransom with his car, Harry refused, but told Locklear that if he wanted a hit man he should see A.R. Barnes.

On 16 August, Locklear met A.R. Barnes and gave him a ride to Locklear's house. After some negotiation Rogers and Dottie Locklear agreed to pay A.R. Barnes $2,000 dollars to kill Jackie Ransom. A.R. Barnes said, "If I don't kill him, I'll get it done."

Locklear and A.R. met several times after that. On 8 September, Locklear went to A.R.'s house to see if he was going to kill Ransom, and to tell him the insurance policy had been received. Locklear did not see A.R., but saw his brother, the defendant Elwell "Babe" Barnes. Elwell Barnes asked Locklear if he could take his brother's place and kill Ransom for the same compensation Locklear had promised his brother. Locklear replied that it was up to him.

Elwell Barnes then told Locklear to drive him to the home of the defendant Henry Lee "Mulehead" "Buck" Hunt. When they arrived at Hunt's trailer, Barnes talked with Hunt privately for about 10 minutes. Later, Hunt got into the car, put his hand on his pocket and told Locklear "I got the gun. Me and Babe can get the job done." Barnes replied "Yeah." They drove past a house and Hunt looked at it and said "That looks like where Jackie stay, there." They then drove down a road into some woods and Hunt put the gun in some bushes. They then drove back into town, and Locklear pointed out Jackie Ransom. Hunt told Locklear to get his wife and take her to a place at which there would be witnesses.

At about 11:00 or 11:30 that night the defendants Hunt and Elwell Barnes returned to Hunt's trailer. Hunt took off his clothes and put them in the washing machine, and put a pistol under his mattress. Barnes spent the night on the couch. The next morning Bernice Cummings, who lived with Hunt at his trailer, asked Barnes where they had been the night before. Barnes replied that they had killed Jackie Ransom for $2,000, for Dottie and Rogers Locklear. Bernice asked who shot Ransom and Barnes replied "Henry Lee Hunt."

Later that day Locklear drove to Hunt's trailer. Hunt walked up to him and said "I killed Jackie last night." He said he wanted his money in 30 days or he would kill Dottie and Locklear. Later that day, Ransom's body was found in a shallow grave.[1] An autopsy revealed that Ransom died from a gunshot wound to the head.

The next day, 10 September, the defendants were at Hunt's trailer. Buddy Row Barton drove up. Hunt went to

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[1] This appears to be an error as the trial transcript shows Jones' body was buried in a shallow grave, not Ransom's.

Barton's car and returned after a few minutes, and stated that Larry Jones was running his mouth, and that he "would put a stop to his damn mouth."

Larry Jones lived with Hunt's sister Aganora.[2] He met several times with Detective Mike Stogner of the Lumberton Police Department and SBI Agent Lee Sampson and talked about Ransom's death.

On 14 September, Hunt told Bernice Cummings that he was going to "kill that water-headed, ratting son-of-a-bitch Larry Jones" and wanted to get a shovel so he would "bury him where he never could be found." He stated that Jones had been running his mouth and that he knew that Hunt had killed Ransom. Hunt procured a shovel from Mitt Jones and put it in his trunk. Later, Hunt got a shotgun and put it in the trunk of Bernice's car. Hunt said to Aganora and Bernice that he was going to kill Larry Jones because Jones knew he killed Jackie Ransom, and could get him a life sentence.

Later that day Hunt and Elwell Barnes were riding in an automobile driven by Jerome Ratley when they picked up Jones. They went to the home of a person called "String Bean." They left that place and continued driving. Hunt told Ratley to turn off onto a dirt road, then onto a tram road. Then Hunt told Ratley to stop and turn off the lights. Hunt then turned around and shot Jones in the chest. Ratley saw two or three shots. Hunt said "You don't eat no more cheese for no damn body else. I'll meet you in heaven or hell, one." Hunt then pulled Jones out of the car, and Barnes got the shotgun from the trunk. Jones started

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[2] It appears this sister's name is actually spelled Aggie Nora as this is the spelling the witness gave when she testified at the MAR hearing. The spelling in the trial transcript from which the Court's opinion is drawn is erroneous.

mumbling "Mule, Mule." Barnes pointed the shotgun at Jones head. Hunt said "Don't shoot him with the shotgun," and shot him with the pistol several times. Barnes kept a lookout while Hunt and Ratiey dragged Jones' body into the woods about a hundred yards and buried him in a shallow grave. As they rode back into town, Barnes said, "That man was about to cause me to pull a life sentence."

The next morning, 16 September, Hunt told Bernice Cummings that he had carried Larry Jones to where he would never be found.

On 1 October, Jones' body was found. An autopsy revealed that he died of a gunshot wound to the head. A ballistics expert testified that bullets removed from the body were fired from the .25 caliber Beretta that Hunt had given his son-in-law after the murders. While in jail, Hunt told his son-in-law he had killed Ransom and Jones. He also told him to get rid of the gun, and to get his brother to "get rid of the black guy," meaning Jerome Ratley, because "he's the one that can hurt me most."

7. In addition to these facts, the transcript of Hunt's trial contains the following facts and circumstances relevant to the issues raised in this MAR. On September 8, 1984, Locklear went to look for A.R. concerning the agreement to kill Ransom. Instead of locating A.R., Locklear met Elwell "Babe" Barnes, A.R.'s brother, who asked if he could take A.R.'s place and kill Ransom. Elwell and Locklear then drove to the trailer of Henry Lee Hunt and Bernice Cummings [hereinafter "Cummings"]. (Tp 2150)[3] When they arrived at Hunt's trailer, Bobby Taylor was working on the motor of a car in the yard. Elwell Barnes got out of Locklear's car and walked off and had a conversation with

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[3] References to (Tp ___) are to the transcript page of Hunt's 1985 trial.

Hunt. Hunt and Elwell Barnes then got into Locklear's car and Hunt directed Locklear to drive into town. Hunt told Locklear he had a gun and that he and Babe could get the job done. (Tp 2158) While riding in the car, Hunt pulled out a brown glove. When asked about this by Locklear, Hunt replied, "If you'd killed as many men as I had, you would have a brown glove in your pocket too, wouldn't you Babe." (Tp 2161) Locklear pointed out Ransom to Hunt and Elwell. (Tp 2163) Hunt told Locklear to go somewhere that night where he would have witnesses to his whereabouts. (Tp 2164)

8. The next day, Locklear drove back over to the trailer of Hunt and Cummings. When he pulled into the yard, he noticed Bobby Taylor again at the trailer. Hunt stuck his head into the window of Locklear's car and said that he had killed Jackie Ransom last night. (Tp 2167) Hunt told Locklear that he would be looking for his money within thirty days or else he was going to kill Locklear and Dottie. (Tp 2168) Ransom's body was discovered in Lumberton later that afternoon.

9. Locklear further testified that on Friday, September 14, 1984 he was at home working on a car when Jones came to his house. (Tp 2171) Jones stayed at Locklear's residence from approximately 5:00 p.m. to 9:00 or 9:30 p.m. While there, Jones gave Locklear a piece of paper which was introduced as State's Exhibit 42. This item was reported by Jones to have been given to him by a policewoman. (Tp 2172) Locklear later gave State's Exhibit 42 to Robeson County Detective Garth Locklear. (Tp 3304)

10. Judy Hester testified that she was an agent for Life & Casualty Insurance Company in August 1984. She had an appointment with Dottie Ransom on August 3, 1984. Dottie wanted to purchase a $25,000 life insurance policy on Ransom. There was a double indemnity provision on the policy that would pay $50,000 if the cause of death was an accident. (Tp 2366) Ransom was at Dottie's house that day and signed the policy.

(Tp 2366) The policy was delivered to Dottie on Friday, September 7, 1984. (Tp 2368)

11. Buddy Parker testified that he worked for Ted Parker's Mobile Home dealership in August 1984. Rogers Locklear and Dottie Ransom came to the dealership on August 11, 1984 and discussed purchasing a mobile home. Parker was told by Locklear and Dottie that Dottie was expecting a relative to die and would be coming into some money. (Tp 2459)

12. Cummings, Hunt's girlfriend in the Summer of 1984, testified that prior to September 8, 1984 she rode with Hunt and Elwell Barnes to the residence of Lucille Barnes Oxendine. Oxendine is the sister of Elwell and A.R. Barnes. On the way to Oxendine's house, Elwell Barnes told Cummings that A.R. had given him a pistol that A.R. stole from his boss, Herbert Bissell. (Tp 2481) When they got to Oxendine's house, Oxendine came out and handed the pistol to Cummings which Cummings identified as State's Exhibit 1, a .25 caliber Beretta [hereinafter ".25 Beretta"]. (Tp 2483)

13. On September 8, 1984, Cummings observed Rogers Locklear and Babe Barnes drive up in her driveway. (Tp 2587) At the time, she was leaving to take Harvey Oxendine to the hospital. (Tp 2486) When she arrived back at her trailer that night around 8:00 or 8:30 p.m., nobody was at the trailer. (Tp 2488) Around 11:00 or 11:30 p.m., Hunt and Elwell Barnes arrived at the trailer. (Tp 2488) Hunt came in, took off his clothes and put them in the washing machine. (Tp 2490) When Hunt came back from the area where the washing machine was located, he had the .25 Beretta in his hand. (Tp 2591) Cummings asked what he had been doing with the gun and he responded that it was none of her damn business. Hunt stuck the gun beneath the mattress of a bed in the trailer. The next day, as she was going out to buy some beer, Cummings observed Locklear drive up in the yard. (Tp 2493)

14. On Monday, September 10, 1984, Cummings told Hunt about a conversation she had with Elwell the day before where

Elwell told her he and Hunt had killed Ransom on Saturday night. Elwell Barnes told Cummings that Hunt had done the shooting. (Tpp 2495-2497) Hunt told Cummings he would take care of it and told her to keep her mouth closed. (Tp 2498) He further stated that if anything came up about it she was to say he was out of town working. Earlier that day, Cummings had observed Hunt having a conversation with a person who had come to their trailer named Buddy Row Barton. After the conversation with Barton, Hunt came back into the trailer and told her that Larry Jones was running his mouth about when Cummings and Hunt went over to Bruce Evers' house. (Tpp 2500-2501) Hunt then told her he was going to put a stop to Jones' damn mouth. On September 14, 1984, Hunt told Cummings he was going over to Mitt Jones' house. She asked why and he said he was going to get a shovel to kill that water-headed, ratting son-of-a-bitch Larry Jones. (Tp 2504) Hunt said he was going to bury Jones where he could never be found. (Tp 2505) Hunt said the reason he was going to kill Jones was that Jones was a water-headed son-of-a-bitch that was going around running his mouth about Hunt having killed Ransom. (Tp 2506) Cummings rode with Hunt to borrow the shovel. Afterwards, they went to Fayetteville and later returned to Lumberton. When they got back to Hunt's trailer, Hunt's sisters, Aggie Nora Hunt and Annie Ruth Wassil, came over to the trailer. Cummings observed Annie Ruth and Hunt go to the back bedroom where a conversation took place. (Tp 2509) Hunt then came out of the back bedroom and said Jones was running his mouth and he was going to put a stop to it. (Tp 2510) Aggie Nora's son, Timmy, then arrived at Hunt's residence. (Tp 2511) Hunt got a shotgun and put it in the trunk of a car and Cummings drove she and Hunt over to Aggie Nora's. (Tp 2512) At Aggie Nora's residence, Hunt, Cummings and Timmy got in Aggie Nora's car and Timmy drove over near the Old Foundry and old fair grounds, a Lumberton restaurant and public park area, respectively. (Tp 2513) Rogers Locklear was living behind the old fair grounds at the time. Cummings and Hunt saw Jones in

Locklear's yard. (Tp 2514) Hunt said, "There's the ratting, sorry son-of-a-bitch." (Tp 2514) The group then proceeded back to Aggie Nora's residence and Cummings and Hunt went back to their trailer. (Tp 2515) When they got back to the trailer, Ashby Hammonds, Elwell Barnes, Jerome Ratley, Cummings and Hunt were there. (Tp 2518) While getting dressed, Cummings told Hunt to leave Jones alone and Hunt responded it was him or Larry. (Tp 2519) Hunt gave her the .25 Beretta and told her to put it in her purse. (Tp 2521) The group went to the Mark IV Lounge. When they got there, Hunt told her to give him the pistol. (Tp 2523) Hunt, Ratley and Elwell left the Mark IV and later came back to pick her up. Cummings and Hunt left the Mark IV later that night with an individual driving whom she described as being a short, fat male. The vehicle was stopped by a police officer that night shortly after they left the Mark IV. When the car was stopped, Hunt handed her the pistol and told her to put it in her purse. (Tp 2528) The officer let the driver go, telling him to park the vehicle and not operate a car anymore that night. When the officer got out of sight, the driver pulled off and the officer came back around and arrested the driver. Cummings and Hunt then walked to Aggie Nora's house and got her son Timmy to drive them back to their residence.

15. The next morning, September 15, 1984, Hunt took Cummings' car to wash it. Later, they returned the shovel to Mitt. (Tp 2532) As they were returning the shovel, Cummings noticed the car seat was damp. On September 16, 1984, Cummings had a conversation with Hunt during which he told her he had killed Jones and carried him to a place where he would never be found. (Tp 2534) Later on September 16, 1984, Elwell went to Hunt's residence. Cummings saw blood on Barnes' shoe and Hunt told Barnes to wash his shoe. Barnes said he would. (Tpp 2535-2536)

16. In October 1984, Hunt had to be in court related to a drug charge. While waiting for that case to be tried, Cummings asked Hunt if he was sorry for what he had done to Larry Jones.

Hunt replied that he was not sorry and that the ratting son-of-a-bitch was supposed to be dead and he had buried him in a place where he would never be found. (Tpp 2557-2558) Hunt was convicted of the drug charge and sentenced to prison. Prior to going to court on the drug charge, however, Hunt gave the .25 Beretta and a shotgun to his son-in-law, Jim Freeman [hereinafter "Freeman"]. Hunt had asked him to keep the two weapons for him while he was in prison. After Hunt went to prison on the drug charge, Cummings had a conversation with Hunt's sister, Annie Ruth. (Tp 2558) As a result of this conversation, Cummings went to Freeman's residence in Buckhead and tried to get the .25 Beretta from Freeman. She was unable to get it. (Tp 2560) Later, she went to visit Hunt at Whiteville prison camp and told him she had gone to Freeman's house to try and get the pistol but Freeman would not give it to her. (Tp 2562) Hunt told her, "I got that took care of."

17. Flora Bell Jones, also known as Mitt, testified and corroborated Cummings' testimony about the trip to get the shovel used to bury Jones. Mitt Jones said that on Friday after Ransom was buried, Hunt and Cummings came to her house and Hunt asked for a shovel saying he wanted to plant some flowers around his trailer. (Tpp 2723-2724) Mitt Jones said the shovel was returned "that Saturday, following Saturday, week[.]" (Tp 2725) She spoke to Hunt when he returned the shovel and saw Cummings in the car. (Tpp 2725-2727)

18. Bobby Lynn Taylor testified regarding events on September 8, 1984. Taylor was at Hunt's trailer that day working on a car. (Tp 2428) While there, he observed Rogers Locklear drive up in a brown Ford LTD. Elwell Barnes was with Locklear. Shortly after Locklear pulled up, Elwell and Hunt had a discussion and then got into Locklear's car and left. (Tp 2431) The next day, which was Sunday, September 9, 1984, Taylor was back over at Hunt's place again working on a car. He observed Locklear drive up in the yard, Hunt walk over to Locklear's car and the two engage in a conversation. (Tpp 2431-2434)

19. Jerome Lewis Ratley [hereinafter "Ratley"] testified that on Friday, September 14, 1984, he went over to Hunt's trailer and was there along with Hunt, Elwell Barnes, Ashby Hammonds and Cummings. The group went to the Mark IV Lounge that night. When they got there, everyone got out of the car except Ratley, Hunt, and Elwell Barnes. Hunt told Ratley he wanted Ratley to drive him to go get some grass. (Tp 2742) At Hunt's instruction, Ratley drove the group in Cummings' yellow Plymouth Valiant over to the area of Lumberton near the old fairgrounds and the Jaycee's Hut. Hunt spotted Jones and told Ratley to stop the car. (Tp 2750) Jones and Hunt spoke briefly. As they did, Ratley noticed a police vehicle parked in the area. Hunt got out of the car and walked off with Jones. Ratley drove to the Old Foundry and parked to wait for Hunt. (Tp 2751) While at the Old Foundry, a police car circled the lot and Ratley observed a female officer in the police car. (Tp 2753) Jones walked up to where Ratley was parked and got in the car with Ratley and Elwell. They drove to the home of one String Bean. (Tp 2757) Hunt came out of the house, got in the car and Ratley drove the group back to the Mark IV. (Tp 2758) Hunt told Ratley, "stay here a few minutes. I'll be right back." (Tp 2758) Ratley got out of the car and relieved himself behind the building where he saw and spoke to Lordell Ivey. (Tp 2758) Ratley told Ivey he and Hunt were going to get some grass. Ratley returned to the front of the Mark IV, got in the car and at Hunt's direction drove out of Lumberton towards Fairmont. (Tp 2762) Ivey testified at Hunt's trial and corroborated Ratley's conversation with him on this occasion. (Tp 3006-3008)

20. Ratley and Hunt were in the front seat with Jones and Elwell Barnes in the back seat. Jones was on the passenger side. (Tp 2765) Hunt directed Ratley to drive the car down a dirt road and then pull off onto a little path. Hunt directed Ratley to turn the car off and as he did so Ratley observed Hunt whirl around in the car and fire shots into the back seat at Jones. (Tp 2767) Ratley saw Jones reach towards Hunt and then fall over onto

Elwell Barnes. (Tp 2768) At that point, Ratley heard Hunt say, "You don't eat no more damn cheese for no damn body else. I'll meet you in heaven or hell, one." (Tp 2769) Hunt got out of the car and pulled Jones out the passenger side door. When Ratley got around to the passenger side, he heard Jones moaning on the ground. Jones was saying, "Mule, Mule, Mule." (Tp 2771) Elwell Barnes, who had gotten a shotgun out of the trunk, went over to Jones and pointed the weapon at Jones' head and said, "Buck, he ain't dead." (Tp 2771) Hunt then pushed Barnes out of the way and said don't shoot him with a shotgun. Hunt used the pistol to fired several shots into the head of Jones from about a foot away. (Tp 2771) They then carried Jones' body into the woods and buried it.

21. On the way back to Lumberton, Ratley asked Hunt, "Buck is that the man that got you busted for that grass?" Hunt replied, "Yes." Barnes then said, "That man was about to make me pull a life sentence." (Tp 2778) Hunt asked Ratley and Barnes if they had blood on them. (Tp 2779) When they got to the lights of Lumberton, Hunt said Barnes had blood on him. (Tp 2779) Hunt told Ratley to drive to Barnes' house to get him some clothes. (Tp 2779) Barnes was living with his sister, Lucille Oxendine. Barnes gave Ratley directions. At the house, Hunt went in and came out with some pants which Barnes put on. (Tp 2781) Hunt used the blood-stained pants Barnes took off to wipe the back seat. (Tp 2781) Ratley then drove Hunt and Barnes back to the Mark IV. (Tp 2782) Later that night, as Ratley was driving Cummings' car home, he saw Officer Sam Lockey had the car Hunt and Cummings left the Mark IV in pulled over. (Tp 2787) Ratley testified he did not initially tell law enforcement officers what he knew about the Jones murder because he did not want to be part of it and did not want to be a rat. (Tp 2791) Ratley testified that during the investigation he was visited by Wilbert Hunt, Hunt's brother. (Tp 2791)

22. Officer Samuel Lockey testified that in the early morning hours of September 15, 1984 he was on patrol and

stopped a car driven by a heavy built man with two other occupants. Hunt and Cummings were the occupants. He later arrested the driver for impaired driving. The time of arrest was 2:25 a.m. (Tp 2518)

23. Jim Freeman, Hunt's son-in-law, testified that Hunt gave him the .25 Beretta prior to going to court on the drug charge in October 1984. Freeman was later visited by Cummings, Annie Ruth and two more people. (Tp 2924-2925) Cummings wanted the .25 Beretta. Freeman would not give it to her. (Tpp 2925-2928) Freeman later visited Hunt at Whiteville Prison camp and Hunt asked what he had done with the gun. (Tp 2930) Freeman told him he had thrown it in the river and Hunt said that was good, that was what he wanted done with it. (Tp 2931) Freeman later saw Hunt in Central Prison and, because Hunt was afraid the room was bugged, they exchanged notes. Hunt against asked Freeman if he had gotten rid of the Beretta and Freeman responded yes. (Tp 2939) Hunt then instructed Freeman to get in touch with his brother, Wilbert Hunt, and to tell Wilbert to get rid of the black guy, meaning Jerome Ratley, because he was the only one that could hurt Hunt. (Tpp 2940-2941) Freeman had not gotten rid of the gun. He had buried it in the yard of his mother. He later sold the .25 Beretta to Mitchell Griffin. (Tp 2535) Freeman testified that when Hunt told him to deliver the message to Wilbert regarding getting rid of Ratley, Freeman asked Hunt if he had really killed any of those people. Hunt nodded, indicating yes. (Tp 2941)

24. Mitchell Griffin testified that he bought the .25 Beretta, from Freeman for $50.00. Griffin later traded the gun to Robert Wayne Jacobs. Jacobs testified that he bought the gun to give to his mother for protection. After he gave it to his mother, a law enforcement officer came and asked about the gun and Jacobs went to his mother's house, got the gun and delivered it to Detective Walter Smith. The chain of custody was corroborated by Jacobs' mother, Mozell Jacobs, and Columbus County Deputy Walter Smith.

25. James Fields testified that at Cummings' request he went to Central Prison on May 10, 1985 to meet with Hunt. (Tp 3040-3042) Cummings did not want to go see Hunt because she was afraid it was a set up to harm her. Cummings had told Fields that Hunt's people were making threats towards her. (Tp 3041-3042) While at Central Prison, Fields saw Wilbert Hunt. Wilbert Hunt had a briefcase which contained a gun and he showed this to Fields. (Tpp 3044-3045) Wilbert and Fields then went in and met with Hunt. The booth was checked for listening devices. (Tp 3047) Hunt told Fields to go back and "tell Bernice that if [he] goes down, she's going down. I'm going to take her down with me." He also told Fields to tell Ratley to say that "the last time that he [saw] Larry Jones alive was at the Mark IV." (Tp 3048) Fields heard Hunt tell Wilbert to give Cummings a gun so that they cold stop Ashby Hammonds from testifying against him. (Tp 3048) Wilbert Hunt said he would "take care of it." (Tp 3049) Hunt instructed Fields to tell Cummings to go to Hunt's lawyer and "tell his lawyer that Ashby had drawed a gun on her and made her tell the police what she told them." (Tp 3049) Hunt said if she did not go up there and tell them that "they was going to barbecue him, or either give him the lethal injection." (Tp 3049) When Fields got back to Lumberton, he delivered the messages to Cummings. (Tp 3051) On Sunday, May 12, 1985, he went to see Ratley and delivered the message from Hunt concerning having last seen Jones at the Mark IV. (Tp 3052) After leaving Ratley's residence, Fields saw Wilbert Hunt. Fields got in Wilbert's car. Wilbert had a gun wrapped in a brown paper bag which he gave to Fields. (Tp 3053) Fields took the gun to his house, looked at it and later delivered it to Cummings. At trial, Fields identified State's Exhibit 45 as being like the .32 caliber gun he got from Wilbert. (Tpp 3054-3055) On cross-examination, Fields said Wilbert told him during this meeting "if [Fields] told any of the conversation that we had, [Wilbert] would kill [Fields]." (Tp 3062) When Fields delivered the gun to Cummings, he told her Wilbert and Hunt wanted her to kill Ashby Hammonds. At that point, Cummings said "I ain't

killing nobody." She was not going to jail for anybody. (Tp 3065)

26. SBI Agent Lee Sampson testified that in September 1984 he was using Jones as a source of information and had contacted Jones concerning the murder of Ransom. On September 14, 1984, he gave Jones an SBI card with his name on it and wrote a phone number on the back of the card. (Tp 3132)

27. SBI Agent Jed Taub testified that red stains in the yellow Valiant Ratley was driving the night Jones was killed were determined to be human blood. The blood stains were found on the floor board of the rear seat, on the left, or driver's side. Upon removing the rear seat cushion, visible stains were seen on the back edge of the seat and on the floor board underneath the seat. Human blood was also on the interior of the passenger side door. (Tpp 3176-3186) SBI Agent Doug Branch testified that three fired .25 caliber bullets removed from the body of Jones during the autopsy were fired from the .25 Beretta. (Tpp 2048, 3231) Branch also testified that a projectile removed from the body of Ransom during the autopsy was a .25 caliber bullet which had also been fired from the .25 Beretta. (Tp 3232) Lumberton Detective Garth Locklear recovered six fired .25 caliber cartridges from the area where Ratley said Jones' body was lying when removed from the vehicle the night he was killed. SBI Agent Branch testified that five of these six fired cartridges had been fired in the .25 Beretta. (Tpp 3233, 3345-3346)

28. Lucille Oxendine, Elwell Barnes' sister, testified that in September 1984 Cummings, Hunt and Elwell came to her house in a yellow car. (Tpp 2893-2894) Elwell came in and as a result of a conversation with Elwell she retrieved a gun she had earlier been shown by her brother, A.R. Barnes. (Tp 2896) Oxendine carried the gun outside and delivered the gun to Cummings, who was in the car with Hunt. (Tp 2897) Oxendine also testified that at about 11:00 p.m. September 14, 1984 Hunt came to her house. (Tp 2898) Hunt told her Elwell had messed up his pants and

needed another pair. (Tp 2899) She gave Hunt a pair of pants for Elwell and Hunt left. (Tp 2899)

29. Lumberton Patrol Officer Mary Mandy Hunt testified she arrested Locklear on the evening of September 14, 1984 for carrying a concealed weapon, a .32 or .38 pistol, and transporting liquor. (Tp 2865) After processing Locklear, she went back to locate Jones whom she found walking near the old Jaycee Hut. (Tp 2865) She delivered to Jones a piece of paper introduced as State's Exhibit 42 with "Everything is alright" written on it. (Tp 2872-2873) She observed Jones approach a yellow vehicle. (Tpp 2867-2868) A person got out of the car and was talking to Jones. (Tp 2869) The vehicle pulled away. When she had first seen the yellow vehicle, there were three people in it and the driver was a black person. (Tp 2869) Ratley is a black male. After the vehicle pulled off, it went and parked at the Old Foundry. There, she observed only two people in it. The black person was still driving. (Tp 2870) She got the license tag number of the vehicle. The tag number was that of Cummings' yellow Valiant which Ratley was driving.

30. Harvey Oxendine was called as a witness for Hunt at the guilt phase. On September 8, 1984, Oxendine, Hunt and Cummings picked grapes during the afternoon after which Oxendine became W. Cummings took him to the hospital around 6:00. (Tp 3575) After being treated at a hospital, Cummings drove Oxendine back to Hunt's residence. When they got back to the residence, Oxendine testified, "I think there was nobody around that trailer when we got back." (Tp 3576) After a *voir dire*, Oxendine testified that he had earlier told counsel for Hunt that Hunt was at the residence when he returned from the hospital but Oxendine explained he was thinking of another time when he made the statement to Baker. (Tp 3606) On cross-examination by the State, Oxendine testified that when he made the statement to Baker he had not had time to think about the incident. Oxendine then testified that as he and Cummings were leaving the residence for the hospital he saw Elwell sitting in a brown car in the yard. The driver of the brown car wore glasses.

(Tpp 3615-3616) When he and Cummings returned from the hospital, nobody was at the residence. (Tp 3616)

Evidence at the MAR Hearing

31. At the MAR hearing, Thompson testified that he graduated from North Carolina Central Law School in 1977. He passed the bar on the first try and went into private practice on September 6, 1977. (Vol. II, Tp 392)[4] In 1985 approximately fifty percent of Thompson's practice involved criminal law. (Vol. I, Tp 46) Thompson was originally appointed to represent Hunt and Baker was appointed as assistant counsel. Thompson had prior experience in capital litigation, having represented defendants in two capital cases. (Vol. I, Tp 54) In one case, *State* v. *Stanley Sanders*, the jury recommended the death penalty and in the other, *State* v. *Michael Bates*, the jury recommended a life sentence. (Vol. I, Tp 56) In both the *Sanders* and *Bates* cases, he presented evidence at the penalty phase on behalf of his clients. (Vol. I, Tpp 57-60) From his experience in these cases, his view of the sentencing proceeding was to put on evidence in mitigation, if you find any, to humanize your client if possible to do so without opening the door to potentially damaging evidence. (Vol. I, Tp 61) In the *Sanders* and *Bates* cases, he developed mitigating evidence by talking with the family members and to the clients. He talked with friends, employers and coworkers also. (Vol. I, Tp 64) Defendant's Exhibit 2 is a transcript of an interview with Henry Lee Hunt dated June 7, 1985. (Vol. I, Tp 69) In the interview, several people who were potential witnesses were identified. Thompson tried to speak with Cummings and Ratley and perhaps other witnesses. He got an order requiring the District Attorney to produce those witnesses but Cummings would not speak to him. (Vol. I, Tp 74) Elwell Barnes was a co-defendant and he could not speak to him.

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[4] References to (Vol. __, Tp ___) are to the volume and transcript page of Hunt's 1994 MAR hearing.

(Vol. I, Tp 75) Thompson did not speak to Bobby Taylor. Bobby Taylor was not produced as a witness at the MAR hearing. There is no evidence before this Court to rebut Taylor's trial testimony or to show his testimony would have been different at Hunt's trial had he been interviewed by Thompson. Taylor's trial testimony tends to corroborate the testimony of other State witnesses, including Cummings and Locklear. Rogers Locklear was represented by counsel and Thompson would not have tried to speak with him without first going through counsel. (Vol. I, Tp 76) Locklear did not testify at the MAR hearing. Thompson believes he tried to speak with Dottie Ransom through counsel and counsel refused to let him speak to her. (Vol. I, Tp 76) He did not speak with Harry Locklear, Rogers Locklear's brother. Harry Locklear was not called as a witness at the MAR hearing. Thompson did not speak with Otis Ray Stevens that he can recall, but believes that Stevens had an extensive criminal record and would not have been particularly helpful. Stevens was not called as a witness at the MAR hearing. (Vol. I, Tp 77) Thompson did not recall speaking with Alvin Haggins or Alvin Fields, but believed he recalled some discussion about Fields and made a decision that Fields would not be that helpful. Alvin Fields was called as a witness at the MAR hearing. Fields testified he first met Hunt in 1983 and stayed with Hunt on and off. (Vol. V, Tp 1213) Fields would stay with Hunt when Fields' sister would not take him in. Hunt let him stay there and gave him "cigarettes, clothes and stuff like that." (Vol. V, Tp 1213) Fields sometimes baby-sat for Hunt and Cummings' children. (Vol. V, Tp 1215) Hunt would take Fields to the hospital and treated him well. Fields testified during direct examination that on September 8, 1984 when Oxendine got sick, Fields, Hunt and Cummings' baby stayed at the house while Cummings took Oxendine to the hospital. Bernice came back a short time later. (Vol. V, Tp 1216) Fields could not recall whether Oxendine was with Cummings when she came back. Fields testified he was at the trailer on the evening of September 8, 1984 with Bonnie. (Vol. V, Tp 1216) On cross-examination, Fields testified he had

never gone by the name Alvin Haggins. He does not know why Hunt would have told his lawyers that his name was Alvin Haggins. (Vol. V, Tp 1217) If the lawyers were looking for Alvin Haggins, they would not have found him. (Vol. V, Tp 1218) Fields said he had probably spent about five nights at Hunt's residence, but could not recall the dates. (Vol. V, Tp 1218) Concerning September 8, 1984, Fields said he got to Hunt's residence at about 9:30 a.m. He did not go there to baby-sit, just to find a place to stay. He had been living with James Fields, his cousin, prior to this but got mad at his cousin. (Vol. V, Tp 1220) While at Hunt's trailer he sat around and drank a little bit of beer. He drank beer while baby-sitting. (Vol. V, Tp 1221) Fields testified Cummings went to the hospital around 9:30 in the morning and came back shortly thereafter. She came back around 1:30 p.m. (Vol. V, Tp 1223) Cummings stayed at the trailer the rest of the day and there was no need for Fields to baby-sit anymore. He left Hunt's residence and walked back to James Fields' house. (Vol. V, Tp 1224) He arrived at James Fields residence at about 2:00 in the afternoon and stayed with James Fields the rest of the day and slept at his house that night. (Vol. V, Tp 1224) On re-direct, Fields said he could not recall the time of day Cummings took Oxendine to the hospital. He believed he spent the night of September 8 with James Fields. (Vol. V, Tp 1229) The Court had an opportunity to observe Alvin Fields' testimony. Fields appears to be a person of limited intelligence. His testimony at the hearing was conflicting, lacked credibility and does not support Hunt's contention that Hunt stayed at his residence the entire night of September 8, 1984. According to Fields' testimony, Fields was not at Hunt's trailer in the afternoon and evening of September 8, 1984.

32. Thompson did not speak with Carl Britt, but recalls Baker having talked with one of Hunt's employers in anticipation of calling the employer to give work history information at the sentencing hearing. Baker told Thompson that the employer said Hunt was a pretty good foreman and that the people who worked

with him liked him, but that the reason they did so was because they were all scared of Hunt. (Vol. I, Tp 86) Thompson testified he began looking to develop mitigating evidence prior to trial. He had discussions with Hunt on a number of occasions with respect to their defense. These discussions included, among other things, whether Hunt should take the stand and testify and whether a psychiatrist or psychologist should be utilized and whether to put on mitigating evidence. (Vol. I, Tp 87) Thompson made the decision not to put on mitigating evidence because the defense was concerned about opening doors to evidence that would be harmful, which they knew was available to the State. (Vol. I, Tp 81)

33. Hunt always maintained he did not participate in the killings of Ransom and Jones. When Hunt was asked about statements witnesses like Ratley and Cummings had made, Hunt's response was that they would not be testifying against him. As of June 7, 1985 Thompson knew it was his responsibility to prepare for the sentencing phase of the trial. Thompson believes he spoke to most of Hunt's sisters. (Vol. I, Tp 90) The defense obtained the services of a private investigator. (Vol. I, Tp 94) Defendant's Exhibit 4 is an interview with Aggie Nora Hunt dated June 13, 1985. Also present during the interview was defendant's father, Sam Hunt. (Vol. I, Tp 105) Thompson considered using the defendant's father and his sisters to present social history evidence related to mitigating circumstances at sentencing. The sisters did not want to testify and they were adamant about not testifying. (Vol. I, Tp 106) Thompson testified this was, in part, because the State had evidence that some of Hunt's family members had been involved in attempts to dispose of evidence and obstruct justice. At an initial interview of Aggie Nora, she was reluctant to disclose her association with Jones. Hunt's father could have provided family history information and Thompson feels he talked with Sam Hunt about these matters. (Vol. I, Tp 107) Thompson recalls one of Hunt's sisters had health problems and did not

want to testify. (Vol. I, Tp 108) Aggie Nora was afraid of being implicated about going to Hunt and telling him Jones had been talking to the police. Although Aggie Nora told Thompson in Defendant's Exhibit 4 that Larry Jones was saying Rogers Locklear was responsible for Ransom's death, this was not inconsistent with the State's theory. Putting on Aggie Nora at guilt phase to say Jones was talking about Locklear being responsible for Ransom's death would have tended to corroborate the State's case.

34. Hunt was adamant that he did not want a psychiatrist or psychologist. (Vol. I, Tp 110) Thompson advised Hunt that a psychiatrist would be helpful and Hunt kept saying I'm not crazy, I don't need one. Hunt appeared offended by the suggestion that one might be helpful in examining him. (Vol. I, Tp 111)

35. Both of the co-defendants were represented by counsel and Thompson could not talk to them. Thompson talked with Carolyn McKeithan, the manager of the Mark IV, regarding who left the Mark IV, the night of September 8, 1984 and other matters. (Vol. I, Tp 116) Defendant's Exhibits 5 and 6 are summaries of discovery received the State. As discovery was received, the information was discussed with Hunt. Thompson considered the possibility that someone was threatening the State's witnesses to make them give the statements against Hunt. Hunt continued to maintain that the witnesses would not say on the stand what was contained in the statements. (Vol. I, Tp 130) Witnesses providing highly damaging evidence like Cummings and Ratley were people close to Hunt. Hunt was not providing his lawyers with other witnesses who could dent the State's case. (Vol. I, Tp 133) The same people Hunt said could vouch for his whereabouts were the people who were giving statements to police implicating him. (Vol. I, Tp 134)

36. Thompson does not recall speaking with P.H. Atkinson, who testified for the State. Atkinson did not testify at the MAR hearing. Thompson may have talked with Herbert Bissell. The State's evidence showed the .25 Beretta was stolen from Bissell

by A.R. Barnes. Bissell did not testify at the MAR hearing. Thompson did not talk to SBI Agent Doug Branch, the ballistic expert for the State. Branch did not testify at the MAR hearing and there is no evidence before this court to impeach his testimony that the projectiles removed from the victims were fired in the .25 Beretta. Thompson reviewed the State expert's report concerning examination of soil on shovels introduced by the State. Thompson does not believe he filed a motion *in limine* to keep the shovels out of evidence. From his review of the report, the analysis of the shovels was not harmful to Hunt. The soil on the shovels could not be matched back to the dirt at the gravesite. (Vol. I, Tp 47) The shovels were admissible to corroborate the testimony of Cummings and Ratley.

37. Thompson did not talk with Dr. Shkrum, the pathologist who performed the autopsy on Larry Jones. Thompson compared the description Ratley gave in his statement to the autopsy report of the pathologist to see if the wounds were consistent with Ratley's testimony. (Vol. I, Tp 162) Thompson did not see anything inconsistent with what Ratley was saying about the shooting. (Vol. I, Tpp 155-156) Dr. John Butts, Chief Medical Examiner for the State of North Carolina, testified at the MAR hearing. In preparation for his MAR testimony, Dr. Butts reviewed the autopsy of Larry Jones, the original color transparencies illustrating the injuries to the body, x-rays used for identification and transcript sent to him by counsel for Hunt. The transcript included excerpts of Ratley's trial testimony. (Vol. X, Tp 2564) On direct examination, Dr. Butts testified that from reviewing these materials he formed the conclusion that there were wounds to Jones' body which were consistent with Ratley's testimony, in terms of location and description. Specifically, the wounds to the back of Jones' head could have been inflicted as he lay on the ground, as described in the trial testimony of Ratley. (Vol. X, Tp 2565) On the front of Jones' body, there was a through-and-through wound in the chest. There was no other apparent injury on the front of the body, though there was

evidence of injury to the front part of Jones' head and a gunshot wound to Jones' left flank. Animal predation obscured any injury to the face that might have preceded the animal predation. (Vol. X, Tp 2566) Other than the chest wound and possible wound to the front of Jones' head, the other wounds were on the back of Jones' body and did not seem consistent with having occurred in the car. (Vol. X, Tp 2566) The injury to Jones' chest would not have been disabling to Jones. The wound to the left flank would not have necessarily disabled Jones because it did not strike any vital organs or structures. (Vol. X, Tp 2567) There was a portion of the skull bone missing in Jones' head around the face. There was a hole in the left side of the skull that the pathologists were unable to conclude either was or was not a bullet hole. They were unable to exclude the possibility that it was a gunshot wound. (Vol. X, Tp 2568) Dr. Butts could not say with certainty how much blood would have come from these wounds. The wound to the left back wound not necessarily have bled a great deal because it did not strike any major vessels or organs filled with blood. The wound to the chest was superficial and did not strike any major vessels. It would have bled but he does not believe it would have bled profusely. The wounds to the head could have caused considerable bleeding. Jones' body was considerably decomposed. There was decomposition fluid in the clothing. Butts could not offer an opinion on whether it would have been possible to run any tests on the clothing to determine the presence of blood. (Vol. X, Tp 2569) On cross-examination, Dr. Butts testified that although he was not provided all the trial transcript of Ratley's testimony, it appeared to him there had been two or three shots fired in the car. (Vol. X, Tp 2570) Dr. Butts acknowledged that he was not in the courtroom when the testimony was given and he could not catch nuances from a cold transcript. In preparation for his testimony at the MAR hearing he only reviewed transcript pages 2767-2772 and pages 2851-2856 of Ratley's testimony. At the autopsy there was some difficulty in connecting the chest wounds, but in Dr. Butts' opinion, they were not two separate wounds because there was

no wound track into the body. The wound to the left back had a wound track going left to right, downward and forward. (Vol. X, Tp 2575) The projectile causing this wound was recovered in the psoas muscle, which is the muscle that runs along the side of the spine. The bullet did not strike the vertebral column, but was in the general area of the spinal cord. (Vol. X, Tp 2575) The wound to the left flank would not, in his opinion, be disabling, that is would not have caused Jones to become immobile, to collapse, to become unconscious or to render him incapable of further movement or purposeful activity. (Vol. X, Tp 2576) Although he would not have expected the injury to cause Larry Jones to go down, Dr. Butts acknowledge people who are shot sometimes go down even though the injury would not necessarily disable them. The injury to the left flank could have caused Larry Jones to go down. (Vol. X, Tp 2576) The wound to the left flank could well have been inflicted in the car if the decedent was twisted around appropriately. (Vol. X, Tp 2576) From the information provided Dr. Butts, he believed Jones was in the back seat, but it was not clear from the information provided him where in the back seat Jones was seated. In reviewing the information provided him, he was asked by MAR counsel mainly about wounds to the front part of Jones' body. Depending on the relative positions of the person firing the gun and the decedent, the wound to the left flank could have been inflicted in the car. (Vol. X, Tp 2578) Animal injury to the left side of Jones' face prevented the pathologist from determining whether there was a gun shot injury in that area. The pathologist could not discount that there could have been a gun shot wound to the left side of the head. (Vol. X, Tp 2579) If there was a gun shot wound to this area of the head, it would have bled. There were two clear gun shot wounds to the back of Jones' head. These were entirely consistent with Ratley's testimony. (Vol. X, Tp 2581) Although the autopsy shows a blood sample was provided to the Robeson County Sheriff's Department, Dr. Butts had no recollection where it came from. He would expect it probably came from the spleen, a soft organ usually gorged with blood. They use squeezings

from this organ in decomposition cases to try and perform toxicology. (Vol. X, Tp 2584) Toxicology was positive for alcohol but there was no quantification. The spleen was markedly decomposed. In a decomposed body, organs can be positive for alcohol as a result of the decomposition process. The toxicology does not tell Butts whether Jones was drinking or not prior to his death. (Vol. X, Tp 2584) In Butts' opinion, it is not unusual not to be able to get blood from a body in the condition that Jones' body was in. (Vol. X, Tp 2585) Dr. Butts acknowledged that two of the wounds to Jones, the through-and-through to the chest and the wound to the left flank could have been inflicted in the car consistent with Ratley's testimony. Dr. Butts could not rule out the possibility that a third gunshot wound to Jones' head could have been inflicted in the car. The gunshot wounds to the rear of Jones' head were entirely consistent with Ratley's testimony. Dr. Butts' MAR testimony does not impeach Ratley's trial testimony.

38. Thompson did speak to the State's serologist, but did not believe that he could have successfully kept the blood evidence found in the yellow Valiant out of evidence. He did review the report of the serologist. (Vol. I, Tp 179) SBI Agent Jed Taub was called as a witness at the MAR hearing. Taub testified that he received a blood sample from Jackie Ransom and determined it gave a reaction for hemoglobin type A. Item A-3 submitted to him, which were scrapings and stained items from under the car seat, also gave reactions for hemoglobin type A. Ninety-nine percent of the people over the age of six months are type A on the hemoglobin system. (Vol. IV, Tp 4) He attempted ABO blood grouping tests on assorted stained items underneath the seat and on the sample marked Jackie Ransom, but the results were inconclusive on both items. The sample from Ransom had hemolyzed and was beginning to putrefy. He did luminal tests in the car. Luminal will give reactions for other substances than blood. (Vol. XIV, Tp 7) Even if the blood from Ransom had been properly stored from the time it was drawn at

the autopsy until delivered to the SBI, it is likely that it would have started the process of being hemolyzed. The degradation process of the blood starts immediately upon death. Regarding Larry Jones' blood, there was only a tiny bit of blood in the medical examiner's vial. It was thoroughly rotten and you could not even draw it up in a pipette. It gave him no reactions in any group at all. (Vol. XIV, Tp 12) He examined some suede shoes for blood. He got no results from phenolphthalein testing on the shoes. (Vol. XIV, Tp 13) Taub was asked his opinion on whether all traces of blood could have been removed from suede shoes if the shoes had blood on them on September 15, 1984. Taub responded that it depended on storage. If there had been blood on them and there had been no washing the blood could still be there a year later. In normal use, a few weeks of wearing will usually get blood off shoes. Washing them in the washing machine with large amounts of cold water will get the blood off. Leaving them where insects, such as roaches, can get to them would effectively remove most of the blood in a short time. (Vol. XIV, Tp 14) Concerning whether an examination of Jones' clothes would have revealed any analyzable blood stains, Taub testified that it depended on the condition of the burial. Robeson County soil is home to a host of bugs that eat blood. If Jones was not buried very deep and it rained during the time he was in the grave, it is unlikely that there would have been any analyzable blood in his clothes. (Vol. XIV, Tp 15) On cross-examination by the State, Taub testified that during his examination of the vehicle he noted blood stains in the back seat area on the left or driver's side, particularly in the floorboard. He removed the back seat and there was visible blood on the back of this seat and the back of the bottom seat cushion. There was visible blood on articles on the floorboard underneath the seat. (Vol. XIV, Tp 18) Luminal testing revealed run patterns going down the back seat when the bottom seat cushion was removed. The blood had been diluted and, in Taub's opinion, there had been an attempt to clean up the blood. (Vol. XIV, Tp 20) Testing revealed human blood on threads that were absorbed from the

right or passenger side door. (Vol. XIV, Tp 22) Human blood was also detected by testing on blood stains absorbed from the footwell floor mat on the rear driver's side and on scrapings and stained items from under the rear seat. (Vol. XIV, Tp 22) The shoes reported to have been Elwell Barnes' were examined on August 6, 1985. Blood will wash out fairly easily if you use cold water. (Vol. XIV, Tp 31) Taub's physical findings corroborated the testimony of Ratley.

39. In preparing to cross-examine Ratley, Thompson had reviewed his statements and was prepared to impeach him with inconsistencies. (Vol. XIV, Tp 181) Thompson tried to find witnesses who were at the Mark IV at the times relevant to Ransom's disappearance. He did this by speaking with the establishment's manager, Carolyn McKeithan. (Vol. I, Tp 182) He thinks he may have spoken with Betty Hammonds, but he is not sure. Thompson did not interview Gene Otis Hunt. (Vol. I, Tp 188) Gene Otis Hunt was not called as a witness at the MAR hearing. The court is unable to determine the veracity of any statements Gene Otis Hunt may have made in out of court statements.

40. Thompson talked with Hunt in an effort to find impeaching information about people like Cummings, Ratley and Locklear. (Vol. I, Tp 195) Thompson did not speak with Harvey Oxendine, but believes Baker did. (Vol. I, Tp 202) He has no specific recall of talking with Sonny Jones or Willie Bartley, but he knew these individuals and may have talked with them at the courthouse. (Vol. I, Tp 202) Thompson is sure he would have sat down with multiple statements by a witness and tried to pick out inconsistencies and then compare the witness's statement with those of other witnesses to show inconsistencies. (Vol. I, Tp 214) Thompson is certain he talked with Garth Locklear but does not recall speaking with any of the SBI agents. (Vol. I, Tp 202) He spoke with Lumberton detective Mike Stogner. (Vol. I, Tp 221)

41. Thompson considered calling A.R. Barnes as a witness, but was again concerned about damaging information coming in on cross-examination. (Vol. I, Tp 252) He felt the State's evidence in the Larry Jones case was stronger than in the Jackie Ransom case. Thompson's strategy was to impeach the State's witnesses and point out inconsistencies by their prior statements. They considered an alibi defense but were frustrated because Hunt was telling them that people like Cummings and Ratley would not testify and yet they were still being faced with their statements. The witnesses who Hunt said could provide an alibi were largely the same ones who were testifying for the State. These witnesses were not being cooperative with the defense. (Vol. I, Tp 257) In weighing whether Hunt should testify, Thompson was concerned about his prior record. (Vol. I, Tp 259) It was ultimately Hunt's decision not to testify in the case. Hunt did not want to be cross-examined by the prosecutor. The decision was made prior to trial but they discussed it again during trial. (Vol. I, Tp 261) In Thompson's view, the State had a strong case. Prior to the gun being located Hunt told his attorneys he did not know anything about the gun. After the gun was found, his story changed vastly. (Vol. I, Tp 162) Thompson knew that Cummings was in protective custody and that threats had possibly been made against her life.

42. Hunt did not want to testify at sentencing phase. He was concerned there were matters out there that could be used to impeach him. He told his attorneys, "You all do the best you can, I just don't want to testify." (Vol. I, Tp 265)

43. Concerning bench conferences, if a matter occurred which Thompson thought should have been recorded, he would have requested a reconstruction for the record. (Vol. II, Tp 274)

44. In preparing for sentencing, Thompson reviewed mitigating circumstances that had been submitted in other capital cases he tried. He talked with Hunt about utilizing a psychiatrist and talked with Hunt's sisters about social history information. (Vol. II, Tp 286) One of their concerns in presenting mitigating

evidence was that it would open the door to other damaging information. Thompson had received through discovery statements of potential witnesses in which Hunt allegedly talked about killing other people. (Vol. II, Tp 287) Thompson knew of Hunt's criminal record and did not want the details of those crimes before the jury. Thompson knew about Hunt's social history from discussions with Aggie Nora and from talking with Hunt. Thompson knew there was evidence to support social history evidence. Thompson spoke with Hunt about his early life all the way up to the present. He asked Hunt and Aggie Nora about any psychological or mental problems. They did not share that he had any. Hunt had never been in a mental institution or had any psychological problems or been treated for substance abuse or emotional problems. (Vol. II, Tp 296) He does recall during the trial Aggie Nora telling him about Hunt having had a sickness. (Vol. II, Tp 296) Thompson recalls that they explored how a psychologist or psychiatrist could assist in mitigation by way of social history, but it would require an examination and testing. Hunt he did not want to be seen by a mental health expert. (Vol. II, Tp 298) Both Thompson and Baker were of the view that it was desirable to have a psychiatrist, but Hunt was adamant in not wanting one. (Vol. II, Tp 300) Concerning Hunt's social history, Thompson did not know that Hunt's mother bought and sold alcohol illegally, but he is not sure in 1985 he would have considered that a mitigating circumstance. He knew Hunt's parents argued in front of the children. (Vol. II, Tp 301) He knew that Hunt was unable to attend school regularly because he worked to support the family. (Vol. II, Tp 303) Thompson believed that putting on family history information could well have brought out the details of the dynamiting of a dwelling charge. (Vol. II, Tp 304) Thompson did not recall any information about Hunt being labeled retarded. (Vol. II, Tp 305) He believes he knew about Hunt's mother moving to Maryland to live with his father's best friend when Hunt was nineteen. He knew there was evidence that Hunt's wife had a child by another man after they were married and Hunt treated the child as his

own. Thompson knew he could produce evidence that Hunt was a generous human being. But there was also evidence he knew of to rebut it. He knew there was evidence that could be produced that Hunt was a good and loving brother. Thompson knew there was evidence that Hunt was generous with his family and loving towards them. (Vol. II, Tp 313) There was evidence of a good reputation in the community, but there was also evidence to the contrary. Thompson absolutely did not want to put on anything about reputation or character because of potential rebuttal evidence the State had. Thompson was unaware of any evidence of any organic brain defect or that Hunt's capacity to appreciate the criminality of his conduct or to conform it to the requirements of the law was impaired. Hunt never provided them any information concerning this matter. Concerning Hunt's potential for rehabilitation, there may have been evidence of that, but there was also rebuttal evidence that could be very harmful. (Vol. II, Tp 315) Evidence came out during the trial that Hunt was attempting to intimidate witnesses prior to trial. There was also evidence that he was trying to destroy evidence during pre-trial confinement which would have rebutted any evidence of him being well-behaved in prison. (Vol. II, Tp 316)

45. Thompson did not obtain medical records on Hunt. Prior to trial he was not aware that there were any medical records. Nothing came out in conversations with Hunt which indicated he had any hospitalizations or treatment in any mental facilities. (Vol. II, Tp 322) Thompson did not speak with Sonny Hardin. He did not speak with any prison guards that he could recall. (Vol. II, Tp 324) One concern about having put on prison guards is the rebuttal it would have potentially created. Thompson talked to a person named Otis Ray and recalls that Otis Ray would say things harmful to Hunt.

46. During the sentencing phase closing argument, Thompson structured his argument to be an appeal for mercy, that it was not right to take another man's life. He tried to

humanize Hunt in the sense that he argued the value of human life in his closing argument. (Vol. II, Tp 330) While he may have acknowledged there were aggravating circumstances in the case, it was in context that the circumstances were not sufficient to call for the death penalty. (Vol. II, Tp 338) He argued to the jury that even if the aggravating circumstances outweighed the mitigating circumstances they were not sufficiently substantial to call for the death penalty. (Vol. II, Tp 341)

47. On cross-examination, Thompson acknowledged the State had a solid case of guilt. (Vol. II, Tp 428) Part of their trial strategy, however, was to place A.R. Barnes in the position to have been the person who had the opportunity to kill Jackie Ransom. (Vol. II, Tp 400) Thompson introduced A.R. Barnes' confession to the murder of Ransom, which was later recanted, during Hunt's trial. (Tp 3514, 3559) Thompson had a client intake sheet, introduced as State's Exhibit 2 at the MAR hearing, which contains family information, work history, criminal history and other information concerning Hunt. Work history information on the intake sheet shows that Hunt worked for T.R. Driscoll since 1977, on and off, and shows that Albert Smith was his supervisor and Carl Britt his foreman. (Vol. II, Tp 433) Hunt worked in the roofing business. Concerning Hunt's prior convictions, he had an October 1, 1985 conviction for possession with and intent to deliver marijuana and cocaine. He had three armed robbery convictions in 1971 for which he was imprisoned from 1971 through 1980. There was a conspiracy to dynamite a dwelling conviction in 1964. Hunt's criminal history shows that he had been out of jail about three and a half years prior to committing the murders for which he was being tried. (Vol. II, Tp 435) Thompson's intake sheet contains information regarding September 8, 1984, wherein Hunt told him that Locklear came to his house while Elwell, Cummings, Bobby Taylor and Hunt were at the residence. Hunt said he was working on his car and Locklear asked if A.R. Barnes was there. Locklear was in a brown LTD Ford. The people who could

verify this information, were as follows: Elwell Barnes, who was a co-defendant and indicted for the same charges; Cummings, who testified at trial for the State; Locklear, who was indicted and testified for the State; and Taylor, who also testified for the State. From information Hunt was providing, Thompson expected Cummings could provide an alibi. Thompson tried to contact her through family members, but Cummings was uncooperative. Thompson and Baker were concerned that the State was preventing her from talking to them, so they filed a motion to have the State produce her. (Vol. II, Tp 448) When they showed Hunt the incriminating statements Cummings had provided, his response was, don't worry about it, she won't testify and that she would provide him an alibi. (Vol. II, Tp 449) These factors made Thompson's job more difficult. Through discovery it became clear that Hunt was being accused of attempting to dispose of evidence and threatening potential witnesses while he was in prison. (Vol. II, Tp 449) The defense called Harvey Oxendine to provide an alibi for Hunt. The defense put Oxendine on the stand anticipating he would say that when he and Cummings came back from the hospital, Hunt and Barnes were at the trailer. (Vol. II, Tp 453) Oxendine testified at trial, however, that when he got back, Hunt and Barnes were not there. (Vol. II, Tp 453)

48. With respect to Larry Jones' murder, Thompson recalls Hunt telling him he did not do the murder and that the attorneys should not worry about Ratley. (Vol. II, Tp 454) The discovery and trial testimony showed attempts to intimidate Ratley. Although Thompson could have tried to call Elwell Barnes as a witness, Elwell had credibility problems. He had a prior first-degree murder conviction. (Vol. II, Tp 456)

49. Thompson did not see how a psychiatrist could be helpful at guilt phase because Hunt was contending he did not do the murders. (Vol. II, Tp 463) When they discussed a psychiatrist, Hunt appeared lucid and rational. He had sufficient recall concerning the relevant days such that Thompson had no

question about Hunt's ability to recall those events. (Vol. II, Tp 464) Thompson was aware that a psychiatrist could assist them in putting together social history information about Hunt. (Vol. II, Tp 466) Hunt was adamant, however, that he did not want a psychiatrist. Hunt refused to testify at the penalty phase. While discussing whether he should take the stand at penalty phase, Hunt made the comment, "I'm not afraid to die." (Vol. II, Tp 472) In the opinion of the attorneys, there was no evidence to support any statutory mitigating circumstances. They submitted the catch-all mitigating circumstance. (Vol. II, Tp 475) Not having any statutory mitigating circumstances, Thompson considered non-statutory mitigating circumstances. (Vol. II, Tp 475) Thompson's file contained State's Exhibit 3, which is an issues and recommendations as to punishment form in the case of State v. Abdullah. The purpose of the document was to provide ideas about non-statutory mitigating circumstances for Hunt. (Vol. II, Tp 479) Thompson was concerned that putting family members on to provide social history would open doors to more damaging testimony. (Vol. II, Tp 480) On top of this, Hunt's sisters did not want to testify. Hunt's sister Annie Ruth was implicated in trying to dispose of the .25 Beretta and Aggie Nora was living in the same residence with Larry Jones. (Vol. II, Tp 481) Putting Aggie Nora on the stand would have, in essence, corroborated the State's evidence that she was discussing Jones' contacts with law enforcement with Hunt. Family members would also have potentially brought out details of the dynamiting of a dwelling charge and other criminal activity for which Hunt had been convicted. The details did not come out during the trial. (Vol. II, Tp 484) Thompson recalls Hunt saying there was no one in the house at the time he placed dynamite in the refrigerator. He also said it was not done to harm his mother or father. Statements by Cummings showed that Annie Ruth had traveled to Buckhead to retrieve the .25 Beretta from Jim Freeman and knew what the purpose of the trip was.. Thompson considered putting Wilbert Hunt on the stand, but did not think it was a good idea. Thompson recalls that Wilbert did not want

to testify. (Vol. II, Tp 490) Thompson was aware of allegations that Wilbert was involved in trying to deliver a weapon to Cummings and that Hunt had told Wilbert to get rid of Ratley. Prison officials or psychiatric testimony concerning Hunt's potential for rehabilitation would have been rebutted by evidence of intimidation tactics prior to trial. (Vol. II, Tp 492) Moreover, Hunt's prison record itself rebutted any potential for rehabilitation because he went to prison in 1964 and then went back in 1971 for armed robbery. Thompson does not feel he would have been in any better position if he submitted evidence concerning Hunt's potential for rehabilitation. (Vol. II, Tp 494) The Court finds from the evidence at the MAR that Hunt's prison record was significant and details of assaults Hunt committed in prison would have been harmful to Hunt at sentencing. Thompson knew of information about Hunt having been shot by family members. (Vol. II, Tp 494) He had also received State's Exhibit 5 in discovery, which is a statement of Ashby Hammonds wherein he states Hunt said, "I killed Wyles Jacobs! I shot him in the head eight times and one time in the chest! It's hell to live with it! You have to die with it in your gut!" Thompson knew that Jacobs was a codefendant in the robbery Hunt was convicted of in 1971. (Vol. II, Tp 503) Ashby Hammonds had not testified during the guilt phase. The State had also provided through discovery information about Hunt being connected to the killing of a person named Fontaine. (Vol. III, Tp 505) Hunt had told Thompson that they would not have to worry about Garth Locklear testifying if he (meaning Hunt) got out on bond. (Vol. II, Tp 506)

50. The State introduced State's Exhibit 7, a copy of the Department of Correction records related to Hunt's incarcerations. The prison records show Hunt was convicted of the dynamiting charge on December 2, 1964. The prison records contain a notation that Hunt, "[w]as happy in earlier life and can think of no event in that period of his life that has any bearing on his present trouble." The inmate crime version of the dynamiting

charge appears on page 5 of State's Exhibit 7. In part, the version states, "The inmate was very upset by this, and a deep resentment burned in him against his mother and Campbell, and it was his heart's desire to hurt his mother and Campbell in some way." These specifics did not come out at Hunt's trial. A document in prison records dated December 9, 1964 indicates that Hunt had a Beta I. Q. of 80. (Vol. II, Tp 516) Hunt was paroled on the dynamiting charge on September 22, 1966 but his parole was revoked on April 11, 1967. He had three infractions during his incarceration. All were for gambling, two were major, one was minor. Prison records also show that Hunt received consecutive ten to fifteen year sentences upon his conviction of three counts of armed robbery. This occurred in 1971. The co-defendants in the robberies were Johnny Lee Hunt, Hunt's brother, and a Wallace Glen Jacobs. (Vol. II, Tp 520) Prison records also indicate that Jacobs was murdered before his trial. (Vol. II Tp 521) Prison records contain a health evaluation dated December 30, 1971, indicating Hunt was in excellent health. The records show that in June 1969, he was hospitalized for a gunshot wound. On January 7, 1970 he received a gunshot wound to the chest. He was hospitalized three days at that time. In February 1970, he received a gunshot wound in the mouth and was a patient for one day. He was treated at Southeastern General Hospital in 1961 for jaundice and remained in the hospital for three weeks. Thompson did not believe that information in the prison records related to Hunt having been shot three times would be helpful. (Vol. II, Tp 522) Prison records also indicate that "Henry states that his childhood was a happy experience. He was usually punished by his father with almost anything he could get his hands on. He states that he deserved the punishment he received and also that there are no resentful feelings on his part towards his father." In a document dated January 13, 1972 in the prison records, it is noted Hunt has a 99 Beta I.Q. and indicates he had a multiplicity of gunshot wounds from friends and claims to have "shot a few of them myself." (Vol. II, Tp 523) A progress report in the prison

records dated January 25, 1973 indicates that Hunt was a twenty-nine year old repeater serving a 30-to-45 year sentence for three counts of armed robbery. He had no escapes and two infractons on his present sentence. Hunt had one job assignment since being assigned to Central Prison, but lost it due to a major infraction. The document indicated there was nothing of merit in his field jacket. (Vol. II, Tp 524) His prison records also contained an offense report dated May 16, 1972 showing Hunt was charged with the offense of unauthorized possession of a weapon, to wit, a knife. Hunt pled guilty to this offense. (Vol. II, Tp 524) A disciplinary report dated May 29, 1975 charged Hunt with committing assault on another person producing bodily injury. Hunt pled guilty to this offense. A disciplinary report dated February 15, 1985 charged Hunt with stabbing inmate William Hill in the lower abdomen with a knife which resulted in serious injury. Hunt pled guilty to this offense. (Vol. II, Tp 527) A classification report dated May 25, 1979 indicates that while Hunt was serving the armed robbery sentence he participated in home leaves from June 1977 to July 1978. Home leaves were revoked due to a major infraction on July 23, 1978.

51. Thompson's argument at penalty phase against the death penalty was, in part, precipitated by answers received during jury *voir dire* where some jurors stated they had only recently formed their beliefs that the death penalty was appropriate and those beliefs had not been fixed for a long time. (Vol. II, Tp 531)

52. Thompson testified that concerning his Motion for Complete Recordation, if anything was conducted off the record which Thompson had deemed prejudicial to his client, he would have asked that it be placed on the record. (Vol. II, Tpp 535-536) He does not recall any prejudicial matters being conducted off the record in Hunt's case. (Vol. II, Tp 536) The sanitized statement of A.R. Barnes was introduced into evidence. The items redacted can be reconstructed by examining the sanitized statement and reconciling it with the original statement. (Vol. II,

Tp 537) Thompson and Baker introduced A.R. Barnes' inculpatory statement. (Vol. II, Tp 540) They introduced these to show that someone other than Henry Lee Hunt committed the murder of Jackie Ransom. (Vol. II, Tp 540)

53. On re-direct, Thompson said he did not consider putting on the fact that Barnes had failed a polygraph test because polygraph results are inadmissible under North Carolina law. (Vol. II, Tp 540) Thompson believed that the admission of the shovel tended to corroborate the testimony of Cummings that Hunt took her over to Mitt Jones' to get the shovels. (Vol. II, Tp 546) Thompson did not believe a motion *in limine* to keep the shovel evidence out would have been successful. Thompson believes he recalled talking with Annie Ruth about her trip to Buckhead. His recollection is that Annie Ruth did not want to testify because she could be implicated in the attempt to destroy evidence. (Vol. II, Tp 551) Thompson recalls Annie Ruth saying that the purpose of going there was to retrieve a gun. (Vol. II, Tp 552) The information which came out concerning attempts to intimidate witnesses limited the options available to the defense. Also, the failure of Hunt's information to hold true limited the strategy they could develop. Thompson has applied for psychiatric expert funds for use at guilt phase in other cases. (Vol. II, Tp 572) Thompson did not recall speaking with Hunt about addressing the jury in allocution. (Vol. II, Tp 575) Annie Ruth had told them some things that would be incriminating if she was cross-examined about them. (Vol. II, Tp 711) Thompson remembers a conversations between Hunt and Aggie Nora about getting Larry Jones out of the house or having him move out of the house. (Vol. II, Tp 713) Aggie Nora said the reason he wanted Larry Jones out of Aggie Nora's house was because Larry Jones was snitching on him. (Vol. II, Tp 714)

54. Baker testified that Thompson was lead attorney and Baker was assistant counsel. (Vol. II, Tp 798) Baker graduated from law school in 1976 and was admitted to the bar in September of that year. He had represented clients charged with

felonies prior to representing Hunt, but had never tried a capital case. (Vol. II, Tp 799) His practice was approximately 75 % civil and 25 % criminal. After he was appointed to represent Hunt, he got information from the Academy of Trial Lawyers on capital litigation. (Vol. II, Tp 801) He is also sure he talked with other lawyers who had handled capital cases. (Vol. II, Tp 801) Baker recalls working on the change of venue motion and recalls that he and Thompson split up cross-examination so they could concentrate on some witnesses more than others. He spent most of his time on guilt phase and did not do much of anything in the sentencing phase. (Vol. II, Tp 803) He recalls discussions prior to trial concerning mitigating evidence but does not recall when or what types of conversations he had with Thompson. (Vol. II, Tp 807) Baker does not believe he ever talked with Alvin Haggins or Alvin Fields. They had talked with Harvey Oxendine and had a statement from him. When Oxendine got on the stand he recanted his statement. (Vol. II, Tp 808) Baker and Luther Sanderson, their private investigator, went out and talked to him. A few days later, they brought him into court. Oxendine was drinking when he came into court to testify. Baker testified the defense tried to develop an alibi. Elwell Barnes would not cooperate with them. Since they had a confession from A.R. Barnes, they tried to establish A.R. was the one that killed Ransom. (Vol. II, Tp 811) They developed this theory fairly early in the case. Cummings and Ashby Hammonds would not talk to them nor would Ratley and they could not talk to Elwell Barnes, who was a co-defendant. Their information was that Alvin Haggins was mentally retarded. People who could provide Hunt an alibi either would not, were in custody, or when they got there to interview them, they would not talk. The attorneys for the codefendants would not let their clients talk with Hunt's attorneys. (Vol. II, Tp 813) Baker testified he and Thompson had Hunt brought back to Scotland County so that they would have better access for consultation. (Vol. II, Tp 815) While visiting him at penal institutions he did not take the opportunity to talk with guards or wardens or other prison employees about Hunt.

(Vol. II, Tp 815) The only prison official Hunt produced at the MAR hearing was Timothy Ray Deese, who was a Department of Correction employee at the Whiteville Prison Camp. (Vol. XII, Tp 2850) Deese testified that he first met Hunt at the Whiteville unit between September 1981 and August 1982. Hunt worked in the kitchen and did not cause any difficulty. Deese did not have to write Hunt up for any infractions. Hunt was respectful towards Deese as a guard. Hunt adjusted to prison life all right. Deese saw Hunt again between January 1985 and April 1985. At that time, Deese worked the road squad. Hunt worked on the road squad. Deese initially said that he witnessed an altercation between Hunt and another inmate. He then said he did not exactly see what happened. Information Deese learned about the altercation was that apparently one inmate had taken up karate and Hunt more or less was taking up for another inmate's problems. Hunt got kicked above the eye. When Hunt got kicked, he hit the guy with a shank in the stomach and the inmate's intestines fell out. (Vol. XII, Tp 2856) Deese testified that Hunt did not continue the attack and walked out into the yard. Deese's testimony concerning this event was hearsay since he admitted he did not witness the event. This incident shows Hunt possessed a shank in prison and inflicted a serious injury on a fellow inmate. The Court finds this information would not have been helpful to Hunt's case. Deese was the only prison guard or correction official Hunt produced at the MAR hearing. Hunt has spent a significant portion of his adult life in the Department of Correction.

55. Baker testified they obtained funds for a private investigator because they thought it would be a good idea and helpful in finding witnesses. (Vol. II, Tp 818) They were not able to utilize the investigator because they really did not know which way to send him. People who seemed to know facts particularly important to the case were in protective custody or would not talk to them. (Vol. IV, Tp 819)

56. Baker said the attorneys talked with Hunt many times and Baker never felt like Hunt was going to take the stand. He felt they were going to have to develop a case through A.R. Barnes' confession. Witnesses testifying for the State, in Baker's view, were all bums. They had records, they had cases pending against them and the defense felt the State was holding things over their head. Baker intended to bring this information out through cross-examination. Baker felt he had a good relationship with Hunt but Hunt did not want to take the stand. Evidence received through discovery indicated that the State was going to try and link Hunt to other murders if he took the stand. (Vol. IV, Tp 824) In the defense's view, A.R. Barnes was a much better suspect in the Ransom case than Hunt. They felt if they could create a reasonable doubt concerning the first murder, the second murder would not make much sense. Hunt's criminal history was also a consideration in him not taking the stand. (Vol. IV, Tp 824) Baker knows there were discussions about Hunt taking the stand at penalty phase but Thompson did more of the work regarding sentencing. The concerns were similar to those at guilt phase.

57. Mitt Jones was not interviewed, in part, because Hunt admitted borrowing the shovel but said that he did so to plant flowers. (Vol. IV, Tp 380) Baker said the fact it was a capital trial affected the way he prepared for the case. He filed motions he would not file in the average criminal case and he read materials to try and get a better understanding of the law in capital cases. (Vol. IV, Tp 833) He spent more time talking with Mr. Hunt and looking at the law.

58. Thompson was more experienced in capital cases, so he took primary responsibility for the sentencing phase issues. Baker tried to help but Thompson was still primarily responsible. (Vol. IV, Tp 834) Baker testified that he had more interviews with Hunt than are recorded on his time sheets. (Vol. IV, Tp 837) When asked to go down the witness list, Baker said that law enforcement officers, in his experience, at least the ones with

local agencies, would not talk to lawyers about ongoing cases. (Vol. IV, Tp 840) They did not talk with the x-ray technician because there was no dispute about it being Larry Jones. (Vol. IV, Tp 841) They did not interview Herbert Bissell, who was in the chain of custody of the gun, because they felt his testimony would fit right in with their theory of the case, that A.R. Barnes had possession of the gun which killed Jackie Ransom and that A.R. committed the murders. (Vol. IV, Tp 842) He did not talk to the State's ballistic expert. They did not interview John Brockington, the individual who found the body because they did not think he had anything that could hurt the defense. (Vol. IV, Tp 843) Brockington did not testify at the MAR hearing. Baker did not talk to Ernest Driver or Lum Edwards, who were police officers, or Jim Freeman. He did not speak with Mitchell Griffin, who was in the chain of custody of the gun. None of these witnesses testified at the MAR hearing. With the exception of Freeman, there was nothing produced at the MAR hearing to challenge their trial testimony. Baker did not speak with Judy Hester because her testimony fit right in with their theory of the case. Hester was not called as a witness at the MAR hearing and there is no evidence to challenge her trial testimony. Baker did not talk with Mary Mandy Hunt, who is a police officer. Baker anticipated Rosemary Hunt's testimony would fit into their theory of the case. He did not speak with Lordell Ivey, Mozell Jacobs or Robert Wayne Jacobs. At the MAR hearing, there was no evidence presented to challenge the trial testimony of Lordell Ivey, Mozell Jacobs or Robert Wayne Jacobs. Although Baker talked with some witnesses by phone, he does not recall speaking with Mitt Jones. He did not see a need to speak with her because Hunt admitted borrowing the shovel. (Vol. IV, Tp 848) He did not speak with Harry Locklear because he liked the statement from Harry Locklear. He does not recall speaking with Lucille Oxendine. Baker testified that although speaking with her might have assisted in cross-examination, he believes he effectively cross-examined her and discredited her recollection of dates. Lucille Oxendine was not called as a witness at the MAR

hearing. The trial transcript reveals Mr. Baker did an effective job of cross-examining Oxendine. On cross-examination, Baker brought out that Oxendine had never seen the .25 Beretta pass from Elwell to A.R. (Tp 2908) Baker brought out that Oxendine was unsure of her dates and that Oxendine did not know much about guns. (Tp 2910) Baker knew from discussion with Hunt, however, that he had at some time been over to her house trying to get clothes for Elwell. (Vol. IV, Tp 850)

59. He did not talk to the two pathologists because he really did not dispute their findings. The defense's theory was that Hunt did not commit the murders. (Vol. IV, Tp 851) Bobby Lynn Taylor was not interviewed because Hunt agreed that Taylor was over at Hunt's house. (Vol. IV, Tp 852) When the defense got the statements from Ratley in discovery, they talked with Hunt about them. Hunt's only response was that Ratley was lying. (Vol. IV, Tp 864) Although Baker did not talk with the medical examiner, he was prepared to show that the physical evidence did not line up with what Ratley was saying. For example, Baker testified that he deemed it physically impossible to shoot straight at a person with a .25 caliber weapon and have the bullet go in the chest and come out without penetrating the body cavity. (Vol. IV, Tp 865) Baker was also prepared to show that Ratley's testimony was not believable when he testified that the gun clicked after shooting Jones. Semi-automatic pistols do not click when they are out of ammunition. (Vol. IV, Tp 865) He brought this out through the ballistic examiner. The trial transcript verifies Baker's recollection. The ballistics expert was cross-examined about the fact that a semi-automatic weapon would click only one time after the last round was fired. (Tpp 3245-3246) This information was before the jury.

60. Baker did not speak with Jim Freeman, but was of the opinion the State had leverage on Freeman. Baker talked with Hunt about the reasons why Freeman would be testifying for the State. (Vol. IV, Tp 870)

61. Baker spoke with either Hunt or members of Hunt's family about Freeman. Baker did not talk to Freeman's wife. Baker knew Freeman had been caught with a sawed-off weapon, which was a violation of his parole or probation. (Vol. IV, Tp 869) Baker cross-examined Freeman at Hunt's trial. On cross-examination, Freeman admitted that he was caught with a sawed-off weapon. The gun was a .22 riffle. He was never charged. (Tp 2955) Law enforcement officers testified at the MAR hearing that the weapon was just long enough to be legal. Baker brought out on cross-examination at the trial that when investigators first searched Freeman's house, they did not find the .25 Beretta. Law enforcement later went back with a warrant, took Freeman's gun and carried him to Whiteville. Freeman had a discussion with Detective Walter Smith concerning his being in possession of a sawed-off weapon. Freeman testified the detective got him upset and he was scared because he was on probation. (Tp 2557) It was during the conversation with Detective Smith that Freeman told him about the .25 Beretta. (Tp 2957) Freeman testified he was afraid he was going to prison but was never arrested for possessing an illegal weapon. (Tp 2958) Freeman also admitted on cross-examination that he had not told the investigators about Hunt saying he had killed Ransom and Jones until a couple of days prior to the trial. (Tp 2959) Freeman said he wasn't going to say anything about it but one day when he was talking it just slipped out. (Tp 2959) Freeman admitted he had been convicted of death by vehicle. (Tp 2963) Freeman was told by officers that by hiding the gun he might be an accessory after the fact. (Tp 2963) Freeman was never charged with any crime related to the .25 Beretta.

62. Baker testified that Aggie Nora Hunt had a heart problem and was not excited about getting on the stand. She was nervous about the fact that Jones was renting a room from her and the allegations that Jones was talking about the death of Ransom. This all tended to corroborate what Cummings was saying. (Vol. IV, Tp 873) Aggie Nora was a link between the

Hunt family and the death of Ransom. The defense factored in what doors would have opened in cross-examination in deciding whether to put Aggie Nora on the witness stand. (Vol. IV, Tp 876)

63. Baker's impression was that Ratley testified there were two or three shots fired in the car. (Vol. IV, Tp 890) Baker believed that trying to establish that one of the shots fired in the car struck Jones in the head thereby disabling him would not have been a very convincing argument. (Vol. IV, Tp 888) Part of Baker's strategy was to show the jury that Ratley's testimony concerning the shots fired in the car did not fit with the physical evidence. (Vol. IV, Tp 891) Baker testified that when furnished multiple statements from a particular witness, he went through the statements to develop inconsistencies in them. (Vol. IV, Tp 895)

64. Baker testified that in cross-examining Cummings, he brought out numerous reasons why a jury could find she was being untruthful. (Vol. IV, Tp 902) He asked her about living with Ashby Hammonds, people she had shot, whether the State was giving her money, the fact she was mad at Hunt and pending charges the State was holding over her head. (Vol. IV, Tp 902)

65. Concerning whether to put Hunt on the stand at guilt phase, Baker testified that the defense felt the State's evidence developed just as good a case that someone other than Hunt had killed Ransom. They had a confession by A.R. to Ransom's murder. Both Baker and Hunt believed the prosecutor was lying in wait for Hunt to take the stand in order to try and get into evidence other possible murders Hunt was alleged to have committed. (Vol. IV, Tp 904) Hunt was aware of the effectiveness of Britt as a cross-examiner. An additional factor was that Hunt would have testified that he was always with Cummings, Ratley or Elwell Barnes. (Vol. IV, Tp 904) Cummings and Ratley were the same people who were implicating Hunt. (Vol. IV, Tp 906)

66. In terms of the sentencing phase, Baker recalls conversations with Hunt about his family. They discussed whether to get a psychiatric evaluation. Hunt's prior record was discussed. Baker specifically recalls being involved in trying to evaluate Hunt's work history. The defense was concerned about doors that might be opened by putting in his work history but, nevertheless, Baker spoke with one of Hunt's employers.

67. Baker recalled that Hunt did not see the need for a psychiatric examination. Hunt had no obvious mental impairments. Hunt was always able to cooperate with them and was very clear and appeared to understand what was going on. Baker spoke with Hunt's employer at T.R. Driscoll. Baker felt that the employer's testifying for Hunt was a two-edged sword. The employer liked Hunt but would have stated the reason Hunt got along well with other workers was that the other workers were scared of him and nobody dared cross him. (Vol. IV, Tp 914) This would have fit in with trial testimony that Hunt was intimidating witnesses. (Vol. IV, Tp 915)

68. Baker left most of the sentencing decisions to Thompson because Thompson had experience in that area. He was sure they discussed the negative aspects of putting on penalty phase evidence. (Vol. IV, Tp 920) Family members were not excited about taking the stand. Family members did not want to be cross-examined about Hunt's past, anything which he had done or about their involvement in driving to get the guns or going to see him in prison. The defense weighed the benefits of putting family members on the stand to say Hunt had a deprived childhood and then being hit for the next two hours about their potential involvement in the case and details of Hunt's history, such as the dynamiting charge. It was difficult to communicate with Sam Hunt because he was hard of hearing. The attorneys decided not to call Wilbert Hunt because of his alleged involvement. (Vol. IV, Tp 922) Baker acknowledged that even though much of the damaging evidence was already in the record, they did not want to give the prosecution the opportunity

to go back over it. Baker testified they weighed all the benefits of putting family members on the stand. As an example of the potential damaging cross-examination, Baker noted who wants it to come out that Hunt put a bomb in Mama's house. (Vol. IV, Tp 923) Hunt did not appear to Baker to be retarded. Although Hunt had very little education, in Robeson County, the fact that someone cannot read or write or was mentally slow was not necessarily a significant factor or unusual. (Vol. IV, Tp 928) Although Hunt may have gone along with a psychiatric evaluation if they had pushed, Hunt's position was that he was not crazy and it was his intention that he never wanted a psychiatric evaluation. (Vol. IV, Tp 930)

69. While Baker did not consider putting on prison guards, he knew that Hunt had been in a fight and stabbed someone while in Whiteville Prison Camp. Concerning the Motion for Complete Recordation, Baker does not recall any substantive discussions which were not recorded. (Vol. IV, Tp 914) Baker recalled that the State witnesses were not present in the courtroom when other witnesses were testifying with the exception of law enforcement officers.

70. On cross-examination, Baker testified that while interviewing Hunt, he learned Hunt's alibi witnesses for the murder of Jackie Ransom. These were Cummings, Elwell Barnes, Alvin Haggins and Harvey Oxendine. (Vol. IV, Tpp 957-958) For many of the same reasons Thompson discussed in his testimony, Baker was not able to interview these individuals with the exception of Harvey Oxendine. Hunt did not think Cummings would testify against him. (Vol. IV, Tp 962) From what Hunt told Baker, Baker did not think Alvin Haggins would be helpful to the case. Baker did not feel Haggins would make a credible witness. Baker was concerned about the scenario of an essential stranger who was mentally retarded coming into Hunt's house and Hunt leaving his children with Haggins. Baker did not feel this was going to help Hunt's case. (Vol. IV, Tp 963) Baker knew of Oxendine early on but had a difficult time finding

him and locating him. He later got a statement from Oxendine which Oxendine changed when he got to court. Oxendine was another alibi witness Hunt told him about that didn't pan out. Concerning Jones' murder, Hunt was telling his lawyers he was with Cummings, Elwell and Ratley that night. (Vol. IV, Tp 966) Other than the people named above, Hunt didn't give his attorneys the names of any other witnesses who could give him an alibi for the night of Jones' murder. Baker reviewed the autopsy of Dr. Shkrum, he believed the report supported the discrepancies he was trying to show with Ratley's account. His review of the serology report showed the State couldn't match the blood in the car with any of the victims. (Vol. IV, Tp 987) Aggie Nora's testimony concerning her living with Jones was potentially corroborative of the State's case. (Vol. IV, Tp 990) The fact that family members could be linked with attempts to destroy evidence and otherwise intimidate witnesses influenced their decision not to put family members on the stand. Merely putting family members on there to deny these allegations would have given the State the opportunity to go over the topics again. (Vol. IV, Tp 992) Baker didn't see anything at the guilt phase that a psychologist could help with. (Vol. IV, Tp 993) Hunt claimed he did not commit the crime so a psychologist could not help with diminished capacity. Hunt appeared lucid and rational during their meetings. Hunt had a good memory and was able to recall details of the relevant days with no more trouble than anyone else trying to reconstruct events that had happened some time ago. (Vol. IV, Tp 994) Baker and Thompson discussed nonstatutory mitigating circumstances and the use of family members. The defense was careful not to allow character evidence to come in at penalty phase. (Vol. IV. Tp 998) Baker testified that calling prison guards would open up the door to other information about his incarceration. It would not have been helpful to the defense for a jury to hear that Hunt had shot other people. (Vol. IV, Tp 1008) Concerning penalty phase and Hunt testifying, Baker recalls Hunt saying he did not want to

take the stand, he wasn't going to beg for his life. Hunt said he was not scared to die. (Vol. IV, Tp 1009)

71. The Court has reviewed the cross-examination of the State's witnesses by Hunt's trial counsel. The Court finds the State's witnesses were extensively cross-examined. Cummings, Ratley and Locklear in particular were cross-examined about prior untruthful statements they had made to the police, prior convictions and inconsistencies in their prior statements. The Court finds that essentially all of the alleged impeaching information brought forward at the MAR hearing, which Hunt contends could have been used to further impeach the State's witnesses, would have been merely cumulative.

72. Willie Bartley testified at the MAR hearing that he had known Hunt all of his life. Bartley's nickname is "Buddy Row". It appears he is referred to in the trial transcript as "Barton" instead of "Bartley". He had worked with Hunt for about ten years at a roofing company. (Vol. V, Tp 1083) Hunt did not get in trouble when he worked with him. Hunt was never mean to him and he never saw Hunt hurt anybody. He never went to bars or restaurants with Hunt. (Vol. V, Tpp 1084-1085) Everyone at work liked Hunt. Bartley was questioned by the police about Jones' murder and told them he did not know anything. Bartley said he never switched shifts with Hunt in the Mark IV. (Vol. V, Tp 1086) He was never asked by the investigators or prosecutors about yelling at Hunt when Hunt was in the yellow car. (Vol. V, Tp 1088) He never saw Jones in the yellow car. He knew a guy named Bull, a black dude from Fairmont, but never saw Bull driving Cummings' car. He knows all of Hunt's brothers. None of Hunt's brothers ever threatened him. (Vol. V, Tp 1091) He knows Thompson and Baker and neither of them ever talked with him. On cross-examination, Bartley testified he had been convicted of assault on an officer and attempted robbery. The assault on an officer was with a knife for which he got thirty days. He later got ten to fifteen years for attempted armed robbery. (Vol. V, Tp 1093) He was convicted of assault with a

deadly weapon and got six months in 1990. Bartley testified that even though he pled guilty to the assault with a deadly weapon, he wasn't guilty. (Vol. V, Tp 1009) The same was true of his conviction for assault on an officer with a knife. (Vol. V, Tp 1097) Bartley testified he was lying when he said in court that he was guilty of these offenses. (Vol. V, Tp 1098) Bartley testified he was also charged with larceny with a firearm in 1983. He was convicted of that offense on a guilty plea. He pled guilty because his lawyer told him to. (Vol. V, Tp 1100) Bartley testified he had been in a wreck four years ago and it was hard to remember things before the wreck. (Vol. V, Tp 1102) He is a good friend and would do anything in the world he could to help Hunt. He thinks a lot of Hunt's family members including his brothers and sisters. Bartley could not recall specifically when he had worked with Hunt. He believed he had worked with Hunt in 1985. (Vol. V, Tp 1107) Bartley also testified he worked with Hunt in 1985 and 1986. (Vol. V, Tp 1108) The Court notes that Hunt was in the Department of Correction in 1985 and 1986. Bartley did not know where he was on September 8, 1984 and did not know where he was on September 14, 1984. (Vol. V, Tp 1112) After having an opportunity to hear Bartley testify, the Court finds him to be a witness without credibility.

73. Joel Garth Locklear was called as a witness by Hunt. The prosecutor, Joe Freeman Britt, talked to some prospective witnesses in the Jones case. Locklear was present at some of the meetings. He recalls Britt talking with James Fields. (Vol. V, Tp 1122) It was not unusual for Britt to raise his voice at any meeting, but Locklear did not recall Fields crying during the meeting and does not recall Fields changing his statement during any interview. (Vol. V, Tp 1123) Locklear attended most of the trial, but does not remember the State's witnesses being in the courtroom when they were not on the stand. (Vol. V, Tp 1136) During the Jones' investigation, Cummings came and stayed with Locklear's family because she was afraid and in danger. (Vol. V, Tp 1146) Cummings may have had charges pending

against her at the time she stayed at his house. (Vol. V, Tp 1148) When she left his house, she went into hiding at another location. (Vol. V, Tp 1149) When he first interviewed Ratley, Ratley denied knowing anything about the murder of Larry Jones. (Vol. V, Tp 1151) After Ratley was polygraphed, Ratley took Detective Locklear to the scene of Jones' murder. (Vol. V, Tp 1152) The Court notes that Ratley was cross-examined extensively by Hunt's trial attorneys about the fact he had not given truthful statements to law enforcement officers when first interviewed. Detective Locklear testified that when interviewing Ratley, the times in his statement were prefaced by saying that an event occurred around a certain time. Ratley was not necessarily specific about the times because he was reconstructing events that had occurred several months earlier. (Vol. V, Tp 1179) Concerning Ratley's testimony at trial about how many shots were fired inside the car, Detective Locklear's impression from hearing the testimony was that there was more than one shot fired in the car but Locklear had no recollection as to how many others may have been fired. (Vol. V, Tp 1193) Detective Locklear was asked about Defendant's Exhibits 33 and 34, hand written reports by B.L. Wilkins, a Deputy Sheriff, and Samuel Lockley, a Lumberton Police Department Officer, concerning stops they made of vehicles on September 15, 1984. Hunt contends that discrepancies in the times in the two exhibits are grounds to impeach the testimony of Cummings and Ratley. The Court notes that the statement of Lockley, Defendant's Exhibit 34, was apparently created May 2, 1985, approximately eight months after the event. It is not clear when Wilkins' report was generated. Lockley's report has the time of 2:25 a.m. on it but does not indicate whether that is the time the vehicle of Julius Bryant was stopped or the time he was arrested. Aside from the time discrepancies, the statements of the law enforcement officers tend to corroborate those of Cummings and Ratley. Wilkins and Lockley were not called as witnesses at the MAR hearing. Their handwritten statements do not provide an

adequate basis for the Court to find the statements impeach Ratley and Cummings.

74. Concerning the .25 Beretta, Detective Locklear acknowledged that Herbert Bissell, the original owner of the gun, could not positively identify the gun. He testified that it looked like the gun he owned. The cross-examination of Bissell by Thompson brought this fact before the jury. (Vol. V, Tp 1876) Locklear searched Cummings' yellow Plymouth Valiant and found a .25 caliber casing therein. (Vol. V, Tp 1275)

75. Detective Locklear did not report to witnesses waiting to testify, testimony that had already been given in the courtroom. (Vol. VI, Tp 1289) Detective Locklear said in his experience 50% or more of the people you interview in a criminal investigation don't give you accurate information to start with. (Vol. VI, Tp 1298) Detective Locklear said the people he was interviewing in this case were afraid. Defendant's Exhibit 48 is a statement of Buddy Fields. Information contained in this statement indicates Fields never looked in the bag that Wilbert Hunt gave him. This information was made available to Hunt's attorneys through discovery by the State. Detective Locklear did not recall when it was that Fields changed his earlier statement about having not seen the gun. (Vol. VI, Tp 1309) Detective Locklear took a statement from Sonny Jones. In the statement, Jones said he was drunk the night in question. Locklear noted that he may not have gone back to talk with Ratley about things Sonny Jones said because he knew Sonny Jones was drunk. (Vol. VI, Tp 1319) Sonny Jones was not a witness at the MAR hearing. The unsworn statement of Sonny Jones is not an adequate basis to find it impeaches the sworn trial testimony of any other witness.

76. Essentially everyone Locklear talked to in the Jones case was afraid of being killed or that someone was going to hurt them if they told anything they knew about Henry Lee Hunt. (Vol. VI, Tp 1321) Locklear did not know of any witness in the case being told that if they didn't cooperate that their children

would be taken away. (Vol. VI, Tp 1322) He does not recall any witness being told that if they cooperated charges against them would be dropped. (Vol. VI, Tp 1322)

77. On cross-examination, Detective Locklear testified Hunt had an extensive criminal record. Detective Locklear's had no doubt that Cummings feared for her life during the course of the investigation. (Vol. VI, Tp 1325) Likewise, there is no question that Ratley feared for his life. (Vol. VI, Tp 1325) Sonny Jones has a reputation for being untruthful. He also has a reputation for being a drunk. Jones' mother wouldn't even let him live in her house. Locklear has known Thompson for twelve or thirteen years. Thompson has served on the School Board and he has observed Thompson representing client's in criminal cases. Locklear has also worked with Thompson for about three years. Thompson enjoys a good reputation as a criminal defense attorney. His reputation for truthfulness and veracity is very good. Detective Locklear has known Baker for twelve years. Baker has a good reputation for truthfulness and veracity. Detective Locklear knew that Henry Lee Hunt had a reputation for being extremely violent and a very dangerous person. This was Hunt's reputation prior to September of 1984. (Vol. VI, Tpp 1334-36)

78. At trial, Bernice Cummings testified she was afraid and scared of Hunt's family and had gotten tired of living with it. She then gave officers statements implicating Hunt and asked them to protect her. She testified that the reason she wouldn't say anything to the officers early on was because she was afraid of Hunt's family. (Vol. VI, Tp 2674) While testifying before the jury at Hunt's trial, Cummings admitted lying to law enforcement officers because she was afraid to tell the truth. Cummings also testified that she had charges pending against her at the time. (Vol. VI, Tp 2577) Cummings said the pending charges were for stealing a check and forging it but that she had not been made any promises concerning that case. (Vol. VI, Tp 2578) At the MAR hearing, Locklear testified he never promised

Cummings anything in exchange for testimony. She was placed in protective custody out of concern for her well-being and to keep her alive. (Vol. VI, Tp 1342)

79. Dr. Ellen G. McDaniel, a psychiatrist, testified on Hunt's behalf at the MAR hearing. In preparation her evaluation, she spoke with Hunt family members, she reviewed school records for the third, fourth, fifth and sixth grades, she also reviewed some medical records. Dr. McDaniel had prison records which he reviewed through 1985. (Vol. VI, Tp 1447) Concerning Hunt's social history, Dr. McDaniel was told that Hunt's father had no education, he was illiterate, he had a significant alcohol problem and could be violent when he drank. Henry Lee Hunt is the sixth of fifteen children. McDaniel was advised Hunt's father beat up his mother to the point she required hospitalization. Sometimes, Hunt's parents would disappear for days at a time and their children would not know when they were coming back. (Vol. VI, Tp 1449) Sam Hunt forced the boys in the family to fight each other. Hunt's father was a share cropper and the family moved every year. Their yearly moving was due in part to the father's drinking. In 1964, Sam Hunt stopped and things started looking better but Hunt's mother began having an affair with his father's best friend. Hunt's mother moved in with the man. One day in 1964, she wiped out the family funds, took some animals to sell and left with the five youngest children to go to Baltimore. McDaniel testified that family members told her this was devastating to Sam Hunt and he began drinking again. (Vol. VI, Tpp 1449-1450) Sam Hunt encouraged Henry Lee Hunt to blow up the house of Hunt's mother's boyfriend to get even. (Vol. VI, Tp 1450) McDaniel testified that as Hunt got older, he developed a close relationship with his father.

80. Dr. McDaniel testified Hunt's family members told her Hunt's mother was hot tempered and beat the children out of anger. She teased and mocked the children at times. She sold liquor illegally as a source of income. (Vol. VI, Tpp 1450-51)

Growing up, the children slept three or four to a bed. They had outdoor facilities and raised most of the food they ate.

81. Dr. McDaniel testified that family members told her Hunt was broken hearted by his mother running away. Hunt then dynamited the house of the mother's boyfriend. He used dynamite which was used on the farm to blow up stumps. Hunt's mother died in 1977 and he took her death very hard. Family members said the parents were easily taken advantage of by smarter landlords. (Vol. VI, Tp 1450) The parents would register the children for school on the first day but then keep them out to harvest crops. The schools at that time were segregated and the children were aware that the white schools were better. School records indicated that Hunt missed half the school year for the grades that are documented. He is described in the sixth grade as being retarded. Dr. McDaniel testified Hunt is not retarded but that was the school's impression. (Vol. VI, Tp 1452) There are no behavioral problems reported in his school records.

82. In terms of his work record, McDaniel testified that Hunt had worked ever since he was able to do chores on the farm. He is described as a very hard worker by everyone.

83. Concerning medical history, Dr. McDaniel testified Hunt's health was essentially ignored when he was growing up. (Vol. VI, Tp 1453) He had a dislocated elbow in 1950. In 1959 he was hospitalized for about a month with hepatitis. He fractured a wrist in 1960. In 1969, he was shot with a shotgun in the abdomen and underwent surgery. The shooting occurred in a bootlegging house. In 1970, Hunt was shot in the chest by one of his brothers. Dr. McDaniel testified her information was that the brothers were arguing and intoxicated at the time. In 1984, Hunt was shot in the jaw by a cousin who was drinking. Hunt was later shot by another brother. (Vol. VI, Tp 1454) Hunt was kicked in the head by a mule when he was ten or twelve years old. Dr. McDaniel didn't have any medical records on any treatment for the head injury. Dr. McDaniel testified that Hunt

described short periods of blackout, which are not uncommon with closed head injuries. Dr. McDaniel said she saw the result of neuropsychological evaluations which are compatible with a close head injury. (Vol. VI, Tp 1455)

84. Dr. McDaniel testified that neuropsychological testing indicated Hunt had a neurological impairment. He has problems with verbal memory. He has some delayed recall in nonverbal information. He has problems with abstract problem solving and attention. Hunt has a rigidity of thinking meaning that it's not easy for him to shift gears once he gets his mind on something. He has difficulty thinking of other options or how someone else might perceive the same situation. (Vol. VI, Tp 1455) Dr. McDaniel testified that Hunt's neurological impairments make him more vulnerable to substances which would affect the central nervous system, such as alcohol. According to Dr. McDaniel, Hunt began drinking in 1967 at the age of 23. He is described by others as having a severe drinking problem up until the point of his incarceration on the current charges. (Vol. VI, Tp 1456) Hunt is described as getting aggressive when he drinks. She also noted a history of hallucinations when he drinks. (Vol. VI, Tp 1456)

85. Dr. McDaniel testified that Hunt's criminal records shows that he was first sentenced in 1964. This incarceration was for conspiracy to dynamite a dwelling. Hunt was released in 1969 from that conviction. Hunt was next convicted in 1970 or 1971 for three counts of armed robbery. He claimed he was drunk in the back seat of a car at the time of the robberies. (Vol. VI, Tp 1457) Hunt had a few infractions during his incarceration period. He was found with a knife on his leg, which he said was for his own protection. He had a 1974 assault for getting into a fight with another inmate. He was charged with making home brew and gambling. Hunt's record indicates a parole revocation in 1980. The parole was revoked because his wife reported he was threatening her. Hunt contended this was because he was having an affair with another woman and his wife wanted to drop

the charges but her mother made her pursue it. (Vol. VI, Tp 1458) There is an assault on his prison record which occurred in 1985.

86. Concerning marriages, Hunt had a daughter born in 1961 named Theodora. He remains good friends with Theodora's mother even though they broke up after about a year. He still stays in contact with Theodora. He has a second daughter named Kim born in 1967. They have contact through letters. He married Jackie Hunt in 1969. They have two children, Donnie, born in 1969, and Sharon born, in 1970 or 1971. These children also stay in contact with Hunt. Hunt remains close to Jackie Hunt and to her child, Chris, who was fathered by another man. He married his present wife, Mona, in June 1990. This marriage is a spiritual one.

87. Dr. McDaniel had discussions with Dr. Helen Rogers concerning testing Rogers performed on Hunt. IQ testing showed he is a very solid average. On some tests, Dr. Rogers reported a scatter from four to eleven. According to Dr. Rogers, this scatter was significant enough to suggest brain damage. (Vol. VI, Tp 1461) Rogers reported some frontal lobe dysfunction that would affect abstract problem solving and cause rigidity of thinking. (Vol. VI, Tp 1461) Rogers did not report any impulse control problems, other than when intoxicated. Rogers described Hunt was having chronic amnesic disorder. Dr. McDaniel's diagnosis was a cognitive disorder with rigidity of thinking. (Vol. VI, Tp 1462) Other diagnosis Dr. McDaniel made are alcohol abuse, alcohol dependency and alcohol intoxication with perceptual disturbance, meaning, in this case hallucinations. (Vol. VI, Tp 1463) The hallucination history is based on information from Hunt and family members. In Dr. McDaniel's opinion, these diagnosis would affect Hunt's ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (Vol. VI, Tp 1461) The cognitive disorder would have been with Hunt since adolescence. The other diagnosis, alcohol abuse, dependence and intoxication,

have impaired his judgment in the past. In Dr. McDaniel's opinion, Hunt acts under the influence of a mental or emotional disturbance. (Vol. VI, Tp 1465) Dr. McDaniel testified that Hunt spent a significant portion of the twenty-one years between 1964 and 1985 in prison, a very violent setting. He has had a small number of instances of aggressive behavior in response to being threatened, and has otherwise worked hard. He learned to read while in prison.

88. On cross-examination, Dr. McDaniel testified neuropsychological testing was important to her evaluation and she interviewed Dr. Rogers by phone. Dr. McDaniel found Hunt to be of average intelligence which was consistent with IQ results found in prison records. Hunt can perform normal daily functions. She diagnosed brain damage but could not specify the amount of damage or any specific area of the brain which had been damaged. (Vol. VI, Tp 1478) She did not request an MRI. She would have liked to have consulted with a neurologist but she was out of time. She did not have a CT scan or an EEG performed. She didn't see the need to do these tests. Hunt told her he beat his kids like he had been beaten. (Vol. VI, Tp 1484)

89. Concerning the dynamiting of his mother's friend's residence, Dr. McDaniel recalls one of his sisters say she tried to talk Hunt out of it and thought she had. According to prison records, Hunt conceived of the idea of destroying the possessions of his mother's boyfriend. Prison records indicate it was Hunt's heart's desire to hurt his mother and Campbell in some way. (Vol. VI, Tp 1486) Prison records indicate Hunt was happy in his earlier life and that he could think of no event in that period of time that had any bearing on his legal troubles. Dr. McDaniel disagreed with this statement in the prison records. Hunt denied any involvement in the 1984 murders. Concerning his armed robbery convictions, he blamed his lawyer for selling him out. (Vol. VI, Tp 1489) Hunt reported he was intoxicated at the time and couldn't say if he did the robberies or not. (Vol. VI, Tp 1490) Hunt blamed his lawyer and said the lawyer was an

alcoholic who had later been disbarred. (Vol. VI, Tp 1491) Dr. McDaniel had a note regarding the family interview concerning Hunt's first wife, Jackie. This note indicates that Hunt beat her terribly. (Vol. VI, Tp 1492) Hunt becomes aggressive when he drinks. One of his children stated that Hunt beat her mother. Dr. McDaniel acknowledged that Hunt also beat Cummings. From family interviews, Dr. McDaniel learned that Hunt's brother Jimmy shot Hunt when Hunt was beating Jimmy in 1963. (Vol. VI, Tp 1496) Hunt' s family said if you do him wrong, he would get even. (Vol. VI, Tp 1499) Dr. McDaniel acknowledged that she had no idea what was going through Hunt's mind at the time he committed these crimes. (Vol. VI, Tp 1511)

90. Lee Sampson, an SBI agent at the time the Ransom murder was investigated, testified that he interviewed Larry Jones the day Jones was murdered and several days before that. The officers advised Jones if he knew anything about the Ransom murder or if he heard anything about the Ransom murder to let him know. The week before he died, Sampson visited Jones at the home of Aggie Nora Hunt. (Vol. VII, Tp 1559) Larry Jones was never able to provide anything helpful in terms of who killed Jackie Ransom. Jones was of the opinion that Dottie and Locklear were somehow involved. (Vol. VII, Tp 1691) Jones did not mention Hunt, A.R. Barnes or Elwell Barnes to Sampson. Sampson testified that talking about the case is what got Jones killed. (Vol. VII, Tpp 1691-1695)

91. Sampson recalls meeting with James Fields and interviewing him in the District Attorney's Office. When Sampson first interviewed Fields about a gun he delivered to Cummings, Fields told him he got the bag but did not know what was in it. Sampson told Fields it was not human nature to have an open bag and not look in it. Fields then admitted that he looked in the bag and saw the gun. (Vol. V II, Tp 1585) Fields said the gun came from Wilbert Hunt. According to Fields, the gun was to be given to Cummings to kill Ashby to keep him from testifying against Hunt. (Vol. VI, Tp 1586)

92. Cummings expressed her concern to Sampson that Hunt family members were going to injure her. Sampson did not recall any conversation in the District Attorney's Office where anyone told Fields not to mention the gun transfer to one Gregory Lennon. (Vol. VII, Tp 1592) Fields was instructed like every other witness to tell the truth about what he knew. Sampson testified he does not recall any hollering or shouting situations with any particular witness. Sampson did not recall Fields becoming upset or crying during any interview. (Vol. VII, Tp 1594)

93. A.R. Barnes gave an initial statement confessing to the crime. Sampson did not find the confession believable. A.R. said the gun was a .22 when in fact it was a .25. A.R. said the gun was thrown in a river. Law enforcement had the river checked by divers and the gun was never located. A.R. said he had broken a jar of liquor immediately prior to shooting Ransom. Retracing his steps with A.R., he was unable to point out the spot where the jar was broken and they could not find any fragments in the area where he said he was.

94. Sampson testified that Thompson had a good reputation as a criminal lawyer. Thompson's reputation for truthful and veracity is good. Baker likewise has a good reputation as a criminal defense lawyer and a good reputation for truthfulness and veracity. When Sampson first was assigned to Robeson County, the SBI had an open file on the Wallace Jacobs murder. Hunt was a suspect in that case. (Vol. VII, Tp 1724) Hunt's name came up with respect to the Jacobs murder again during the Ransom investigation. They learned through Ashby Hammonds that Hunt had made admissions to him about killing Jacobs. (Vol. VII, Tp 1714) Jacobs was a codefendant in the armed robberies Hunt was convicted of in 1971. Sampson knew Hunt to have a bad reputation for violence.

95. Sampson testified that in their investigation they were able to corroborate many of the statements Ratley made. For example, Lumberton Police Officer Mandy Hunt, saw Larry

Jones in the same area where Ratley said he, Hunt, and Barnes spotted Jones that night. Lucille Oxendine corroborated Ratley's testimony regarding the fact that Hunt came to her house the night Jones was killed to get clothes for Elwell Barnes. (Vol. VII, Tp 1776) Oxendine also corroborated Cummings' testimony concerning she, Hunt and Elwell going to Oxendine's house to get the .25 Beretta.

96. James Fields testified at the MAR hearing that he never looked in the bag which Wilbert Hunt gave him. He said the reason he testified that he did on the stand was because in an interview in the District Attorney's Office he got upset because people were yelling at him. (Vol. VII, Tp 1819) Fields then said none of the officers said a word of harm to him. He said the prosecutor didn't threaten him. (Vol. VII, Tp 1820) According to Fields, nobody threatened him and nobody talked hateful to him at all. Fields testified that the first time he saw State's Exhibit 45 was when he was on the witness stand. He testified that the bag he delivered to Bernice Cummings at the instructions of Wilbert Hunt he later got back from Gregory Lennon. (Vol. VI, Tp 1823) Fields testified that it was suggested that he not talk about Gregory Lennon on the stand because it was too complicated. (Vol. VII, Tp 1826) Fields said the prosecutor, Mr. Britt, told him this.

97. On cross-examination, Fields testified that during the Henry Hunt investigation, Cummings was upset and scared. He testified that according to his recollection, other than the part about looking in the bag, his trial testimony was truthful. (Vol. VII, Tp 1847) Fields testified he was afraid for his life during the Hunt investigation. (Vol. VII, Tp 1862) He may have told law enforcement officers things that Bernice knew that they needed to ask her about. Fields said that when he changed his statement about having looked in the bag, nobody threatened him during that meeting including Mr. Britt. (Vol. VII, Tp 1864) Britt may have raised his voice but he never threatened Fields. Anybody with a loud voice makes Fields nervous. All the officers were

pretty nice to him and he doesn't remember what Mr. Britt or anyone else told him about Gregory Lennon. (Vol. VII, Tp 1868)

98. Fields went to visit Hunt in Central Prison on May 10, 1985 because Cummings asked him to. Cummings was afraid it was a setup. Although Fields testified at the trial that he was shown a gun in a brief case by Wilbert Hunt prior to going into Central Prison, at the MAR hearing he said he didn't remember anything about that event. (Vol. VII, Tp 1886) Fields recalled that Hunt told him at this meeting to go back and tell Cummings if he went down she was going down with him. Hunt also told him to have Cummings relay some information to Stringbean. Hunt instructed him to go tell Ratley that if asked, he was to say the last time he saw Larry Jones alive was at the Mark IV. (Vol. VII, Tp 1887) When Fields was asked about his trial testimony where he stated he overheard Hunt telling his brother Wilbert to give Bernice a gun so they could stop Ashby Hammonds from testifying, Fields testified at the MAR hearing that he wasn't sure he heard that part. He said he could have but he could not have. (Vol. VII, Tp 1888) From observing Fields testify at the MAR hearing, it is the Court's finding that Fields was reluctant to stand by any of his trial testimony related to information implicating Wilbert Hunt. Fields' testimony on these points at the MAR hearing was not credible. Fields testified he recalled Wilbert responding to Hunt and saying that he would take care of it. Fields recalled Hunt telling him during this meeting to go back and tell Cummings to go to Hunt's lawyer and tell Hunt's lawyer that Ashby Hammonds had drawn a gun on her and made her tell the police the things in her statement. (Vol. VII, Tp 1892)

99. Fields testified at the MAR hearing that when he got back to Lumberton that day he delivered the messages to Cummings. The following Sunday, he went to Ratley and delivered the message to Ratley. After seeing Ratley, Fields saw Wilbert Hunt. (Vol. VII, Tp 1900) Wilbert transferred a paper bag to him at that time but Fields said Wilbert did not say what was inside. The bag was heavy like a gun. Fields testified at the

MAR hearing that during his meeting with Wilbert Hunt on the Sunday after he had visited Hunt in Central Prison, Wilbert told him if he repeated their conversation to anyone else, Wilbert would kill him. (Vol. VII, Tp 1910) At the MAR hearing, when Fields was reminded he had testified at the trial that Wilbert told him there was a gun in the bag, Fields said he was not sure about Wilbert having told him that, but he could have. (Vol. VII, Tp 1911) Fields then said he didn't remember Wilbert threatening to kill him. Fields recalled giving statements to Sampson. He remembered telling Agent Sampson in a statement that, "Wilbert said he wanted Ashby dead also." Hunt told Wilbert to get a gun and give it to Bernice Cummings. Fields stated Wilbert told him that day he, Wilbert, would kill him, meaning Fields, if he told anybody. Fields acknowledged to told this to Sampson.

100. The testimony of James Fields at the MAR hearing, to the extent it contradicts or recants his testimony given at the trial, is probably not true. Fields was told by the State agents to tell the truth. He was not pressured into making any statement while testifying at Hunt's trial. The matter about which he claims to have testified untruthfully, i.e., whether he looked in the bag and saw a gun when he was given the item by Wilbert Hunt, is a collateral matter. If Fields did testify untruthfully about the gun, he did so on his own. The testimony was not material to the issues before the jury. The believable testimony of Fields at the MAR hearing shows Wilbert Hunt and Henry Lee Hunt engaged in attempts to intimidate witnesses and obstruct justice, the same as it did when the testimony was presented at Hunt's trial.

101. Former Lumberton Detective, Mike Stogner, testified at Hunt's MAR hearing. Stogner tried to interview Hunt about the facts and circumstances surrounding Ransom's death but after advising Hunt of his rights, Hunt invoked his right to an attorney and ended the conversation. (Vol. VIII, Tp 1973) Stogner talked with Larry Jones practically every day between the day Ransom's body was discovered and Jones was murdered. Jones' information was that he thought Locklear had gotten

Ransom killed. (Vol. VIII, Tp 1980) Stogner does not recall Jones ever mentioning Hunt's name but Stogner did have concerns about Jones' living with Hunt's sister. (Vol. VIII, Tp 1989) He did not talk with Wilbert Hunt because he didn't expect Wilbert Hunt to tell him the truth. (Vol. VIII, Tp 1994) He did not speak with Hunt's sister, Annie Ruth, because from information he was receiving, she was involved in a coverup conspiracy. (Vol. VIII, Tp 1994)

102. Stogner found A.R.'s confession to Ransom's murder unbelievable. A.R.'s confession was not consistent with physical evidence. The caliber weapon used was not consistent. When A.R. retraced the crime, Stogner believed A.R. was essentially guessing where the body was found. They could not find a broken jar. Barnes later told Stogner in Defendant's Exhibit 79 that his brother and Hunt had killed Ransom and used a .25 Beretta, which A.R. had stolen from his employer. (Vol. VIII, Tp 2106) In A.R.'s first statement confessing to the crime, he said the gun used was a revolver. Ballistics show that the .25 Beretta fired the projectiles which killed both victims. The .25 Beretta is a semi-automatic clip loaded weapon, not a revolver.

103. If the lawyers representing Hunt had asked him questions, Stogner would have been very cautious in what he would have told them. (Vol. IX, Tp 2141) Stogner saw James Fields at the courthouse on several occasions regarding the investigation. Fields would freely give them information and occasionally call them aside and give them questions to ask Cummings about things she knew but didn't want to tell. He was very secretive and protective about what he was telling the officers. (Vol. IX, Tp 2169) Stogner never threatened Fields. He had no reason to threaten him, the information he was giving them was good and they didn't want to offend him. Stogner recalled James Fields providing information concerning his visit to Central Prison and the fact that Hunt stated he wanted Ashby Hammonds killed. He recalls Fields telling law enforcement officers that Hunt wanted Wilbert to get a gun and give it to

Cummings. He recalls Fields told them that Wilbert said he would kill Fields if he told anyone about their conversation. (Vol. IX, Tp 2172) Stogner was present when Mr. Britt talked with Fields and the only thing he ever saw Britt do was to tell Fields to tell the truth. (Vol. IX, Tp 2178) Fields was never told he had to testify he had looked in the bag.

104. Stogner has known Hunt his entire law enforcement career, sixteen years. Hunt had a reputation for violence and was known to be a violent man. Cummings and Hammonds were extremely fearful for their lives and were placed in protective custody. Hunt was a very real threat even from prison. In Stogner's opinion, Willie Bartley would do anything Hunt asked him to do.

105. Ricky Brayboy, Hunt's nephew, was called to testify at the MAR hearing. Brayboy never spoke with the lawyers representing Hunt. Sam Hunt did not go in the courtroom much during the trial because he has a hearing problem. (Vol. IX, Tp 2223) Several of Hunt's family members attended the trial. During the course of the trial, family members had conversations with the lawyers. (Vol. IX, Tp 2227) He had a good relationship with his uncle. Hunt fished with Brayboy and they put in tobacco together. (Vol. IX, Tp 2228) He worked with Hunt at T.R. Driscoll and never saw his uncle in any trouble. Hunt invited people who didn't have dinner to come eat with him. (Vol. IX, Tp 2230) Hunt had a loving relationship with his daughter, Bonnie Lee.

106. Brayboy testified he knew his uncle had spent a considerable amount of time in prison during the early part of Brayboy's life. He didn't know what his uncle was in prison for. He knew that his uncle had blown up a residence. (Vol. IX, Tp 2237) Hunt stayed with Brayboy and his mother one time when Hunt had been shot in the stomach. (Vol. IX, Tp 2241) Brayboy knew that Hunt had been shot by a cousin and one of his brothers. His information was that Hunt was shot by the cousin

while they were playing around. He has heard rumors about his uncle being involved in violent activity. (Vol. IX, Tp 2250)

107. Robert Floyd testified that in 1985 he was a lawyer engaged in private practice in Fairmont and was originally appointed to represent Hunt. (Vol. IX, Tp 2257) He withdrew on the basis that he was actively representing two potential witnesses against Hunt. He represented Cummings and Hammonds. (Vol. IX, Tp 2260) Hunt told him during an early interview that Cummings and Hammonds were potential witnesses against him.

108. Dr. Marvin Thompson, a pathologist with Southeastern Pathology Associates, is the regional pathologist and does autopsies for the Medical Examiner's System. He performed an autopsy on the body of Jackie Ransom on September 10, 1984. The autopsy was performed at 8:15 a.m. and at that time, the body had rigor mortis throughout. Rigor mortis starts in the jaw, neck and face area some five to ten hours after death. In Thompson's opinion, Ransom died between twelve hours to three or four days prior to the autopsy. He couldn't place a time of death closer than that. (Vol. IX, Tp 2271) Thompson didn't have any information to form an opinion on whether Ransom's body had been moved after he was shot. He does not know if he talked with Thompson or Baker.

109. Rigor mortis is highly variable. It is difficult to determine a time of death based solely on rigor mortis. (Vol. IX, Tp 2275) In most cases, you determine death by other circumstances, such as, when the person was last seen or a police investigation. Ransom was shot over the left ear. The bullet traveled left to right and downward. It went through his brain and ricocheted off the opposite side of the skull.

110. Betty Lou Hyatt is Hunt's sister. Hyatt moved out of the home in 1954 when she got married. Hunt was a good brother and they all had it hard. The children worked and were beaten. They didn't know what it was not to have money. (Vol. IX, Tp 2215) Their parents didn't know how to show love. Hunt

cooked for his other siblings. One time Hunt brought a ham over to her house and they had a feast over it. (Vol. IX, Tp 2316) Hunt was a hard worker. She talked with Hunt's lawyers and told them she didn't know anything about the case. The lawyers said they were going to put her on the stand but they never did. (Vol. IX, Tp 2316) Hunt and Jones were distant cousins. Hyatt last saw Cummings a week prior to the MAR hearing. Cummings was with Hyatt's son, Ricky. On Sunday morning prior to Hyatt's MAR testimony, she got a call from her sister, Annie Ruth. Annie Ruth wanted Hyatt to go over to Cummings' house at 1:00 because she said Cummings was "going to walk Buck." Hyatt went over to Cummings and asked her about this but Cummings said it was not so. (Vol. IX, Tp 2318) Since 1985, she has had social dealings with Cummings. They are good friends and they visit in each other's house.

111. On cross-examination, Hyatt testified that she had spoken with Hunt a couple of times since he had has been in Lumberton for the MAR hearing. Hunt did not want to hear about their childhood but she said she had to tell the truth. (Vol. IX, Tp 2321) Hunt talked to Annie Ruth a couple of times and her son Ricky. In 1985, Hyatt met with Thompson and Baker about twice. She told them she didn't know anything about the murders of Ranson or Jones.

112. Wilbert Hunt is Henry Lee Hunt's brother. Growing up, the other boys in the family followed Henry. Their father was drunk a lot. Hunt did not get to got to school a lot because he was taking care of the farm. When they quit farming, Hunt took a public job to contribute money to the family welfare. (Vol. X, Tp 2340) Henry Hunt has always been like a father to the other children in the family. Growing up, the children did a lot of hunting and fishing. Wilbert Hunt was convicted in 1965 of breaking and entering, although he testified he was not guilty of the offense. According to Wilbert Hunt, the owner of the business lied about items taken in order to collect insurance. This conviction caused Wilbert Hunt to get angry and develop a

bad attitude. He was later sentenced to prison for a period of twelve to eighteen years. Since 1985, he has been convicted of a cocaine violation. He was sentenced to seven and one-half years for that conviction. He served 23 months.

113. Wilbert visited his brother in prison between October 1984 and the trial. He denied being asked to speak to or threaten Ashby Hammonds. Wilbert testified he spoke with Ratley one time. He went to Ratley's residence and said, "What is going on with you and my brother?" Ratley said nothing was going on. (Vol. X, Tp 2345) Ratley said the law had arrested him, but did not identify any charge. Wilbert said he knew Ratley was lying so he left him alone. He did not see Ratley after that. He never told anyone to go talk to Ratley. (Vol. X, Tp 2347) Wilbert said he never threatened Cummings or tried to dissuade her from testifying. Two or three times between 1984 and Hunt's trial he met with Cummings. During these meetings, she would search him and he would search her. Cummings would tell Wilbert that he did not know what was happening, that she could lose everything and that a lot could happen to her. Cummings said she had to do what she had to do. (Vol. X, Tp 2348) Cummings would say Ashby Hammonds was involved and started everything. Wilbert testified he mostly tried during these conversations to get Cummings to go talk to Hunt in prison. (Vol. X, Tp 2348) Cummings said that she could not go and that law enforcement officials would not let her go.

114. Wilbert Hunt said he never gave James Fields a gun. Wilbert said he gave Fields a brown bag containing a box of .32 caliber bullets. The box of bullets came in the mail and had something to do with a root worker. Wilbert said he was told not to look in the bag, but he could not resist. He looked in the bag to see what it was. There were bullets with names on them. He kept the box a couple of days to decide what to do with it. He carefully wiped his fingerprints off of the box, put it in the bag and took it Fields. He told Fields to give it to Cummings. Fields was instructed not to look in the bag. (Vol. X, Tp 2350)

115. Wilbert tried to get Cummings to go to Central Prison. He tried to get Fields to get Cummings to go visit Hunt. He met Fields at Central Prison on one occasion and Fields told him Cummings was afraid to ride with Wilbert. (Vol. X, Tp 2352) Wilbert Hunt denied ever discussing with anyone a plan to get a gun to have Ashby Hammonds killed. Wilbert Hunt knew Freeman and said he was a good guy. According to Wilbert Hunt, Freeman deals in marijuana and occasionally would take stolen items in trade for marijuana. Wilbert Hunt came attended last part of Hunt's trial. He told Hunt's lawyers that if they needed him, to call him.

116. On cross-examination, Wilbert Hunt said he pled guilty to a breaking and entering charge in 1965 because his lawyer advised him to take the plea bargain, saying if he went to court, he would not win. (Vol. X, Tp 2357) The lawyer said he would be out in six months and this was untrue. Wilbert was next convicted in 1967 for breaking and entering and larceny, and forgery and uttering. He had been out of jail thirteen months before he was charged with these offenses. He received a sentence of twelve to eighteen years for these convictions. (Vol. X, Tp 2359) He served four years and six months and was released in 1972. Wilbert Hunt's next conviction was in 1988.

117. When Wilbert was growing up in the Hunt family, for Christmas he would once in a while get a bicycle and one or two of the boys would get a shotgun. (Vol. X, Tp 2364) Even with sixteen kids in the family, they would still get presents for Christmas. He felt his parents had done the best they could looking after the children and the family. His father had a drinking problem, but the children had plenty to eat. Wilbert Hunt said the family did not have the things they wanted in life, but they never went hungry. (Vol. X, Tp 2365) He parents provided shelter and food. Wilbert Hunt described his brother as an intelligent man and characterized Hunt as a pretty sharp guy. (Vol. X, Tp 2365) Wilbert said his brother had done some stupid things in his life, but he was not a mean person. (Vol. X, Tp

2365) Hunt described blowing up the dwelling and the robberies as stupid things. Wilbert Hunt described his brother's history for being shot as some pretty rough luck.

118. Concerning the bag he delivered to James Fields, the bag just showed up in the mailbox. There was information in the bag telling him to deliver it to James Fields. (Vol. X, Tp 2373) He kept the bag in his trunk for about a week and then delivered it to Fields. He never contacted any law enforcement agency about the bag, he simply delivered it as instructed. (Vol. X, Tp 2375) Wilbert testified he first learned about being accused of attempting to get rid of Ashby Hammonds during the trial. He said he went to Hunt's lawyers and told them to put him on the stand and clear it up. He was told that if they needed him, they would call. (Vol. X, Tp 2385)

119. The Court had an opportunity to evaluate the testimony of Wilbert Hunt during the MAR hearing. His testimony lacks credibility and is contradicted by other witnesses whom Hunt called at the MAR hearing as well as evidence at Hunt's trial.

120. Annie Ruth Hunt Wassil, Hunt's sister, testified at the MAR hearing. Wassil testified and provided social history information essentially consistent with that of other siblings. Children in the family did not have what they wanted but they had what they could get by on. She understands now that it was hard on her parents to support fourteen children as share croppers. (Vol. X, Tp 2370) Wassil attended a portion of the trial during closing arguments. She was not present for testimony of witnesses. Wassil testified concerning facts and circumstances surrounding a larceny from one Bruce Evers. (Vol. X, Tp 2391) According to Wassil, Evers had bought a television from Larry Jones. Wassil, her nephew Timmy and Jones delivered the television to Evers, who invited them to stay and drink with him. She explained to Evers that she had to go pick up her brother and his girlfriend, but would return. (Vol. X, Tp 2394) Wassil left and picked up Hunt and Cummings. They went back to Evers house where Wassil sat in the living room drinking with Evers.

Jones and Cummings went into the back of the house and then later it was time to go. Wassil said when she left and got outside, she discovered Jones had stolen a shotgun or a rifle from Evers. Cummings had taken some stuff off a bathroom wall. Nothing else happened in the house. On cross-examination, Wassil said she did not know there was any property stolen until she was outside in the car. (Vol. X, Tp 2403) She did not report this to the police, however, but said if asked she would have told the truth. (Vol. X, Tp 2404)

121. Wassil testified she went with Cummings to visit Freeman. (Vol. X, Tp 2395) Wassil said it was Cummings' idea to go to visit Freeman. According to Wassil, Cummings never told her why they were going to visit Freeman. While at Freeman's house, Wassil spoke with Freeman's wife, Dora. Wassil said that she asked Cummings why they had gone down there and Cummings responded, "It's better you don't know what we came down here for." (Vol. X, Tp 2396)

122. On cross-examination, Wassil said she knew her father asked Hunt to dynamite the residence of Hunt's mother's boyfriend. (Vol. X, Tp 2405) Wassil said she went to Hunt and told him not to do it. Her pleadings did not have any impact on Hunt. She did not advise the police that this was going to happen or that her brother had done it. (Vol. X, Tp 2406) Prior to going to visit Freeman with Cummings, Wassil said she had not had any discussions with Hunt about going there. After the larceny from Freeman, she never discussed with Hunt her trip to visit Freeman. (Vol. X, Tp 2415) Although Wassil denies knowledge of why she took the trip to visit Freeman, her testimony essentially corroborates that of Cummings and Freeman. Her testimony concerning the visit to the residence of Bruce Evers also corroborates testimony of Cummings concerning Hunt being angered by Jones discussing the Evers incident.

123. Aggie Nora Hunt, Hunt's sister, testified at the MAR hearing. Aggie Nora could not attend the entire trial because she

had babysitting obligations. (Vol. X, Tp 2419) Aggie Nora Hunt said she had conversations with Baker and asked him to let her testify for Hunt. Aggie Nora said she told Baker Jones had told her Rogers Locklear was going to kill Jackie Ransom. (Vol. X, Tp 2420) Baker told her that the prosecutor would make an "a" out of her. Baker then allegedly told her that he wanted to wait until Dottie testified and see what she was going to do. Aggie Nora Hunt denied ever telling Baker she was unable to testify because of her health. (Vol. X, Tp 2422)

124. Annie Ruth Hunt testified she told Baker during a meeting with Mitt Jones that Minnie Locklear, Rogers Locklear's daughter, had called Mitt and said that Locklear came home one night covered with blood and told Minnie he had killed Jackie. (Vol. X, Tp 2429) This hearsay was not admitted for the truth of the matter asserted. Aggie Nora's testimony concerning this alleged statement by Minnie Locklear is rebutted and contradicted by Hunt's own evidence at the MAR hearing. Minnie Locklear was called as a witness by Hunt and asked on cross-examination whether she had ever seen her father covered in blood or with blood all over him and whether her father had ever admitted to killing Jackie Ransom. (Vol. XII, Tp 3218) Minnie Locklear testified she had never told Mitt Jones anything about her father coming home covered in blood. Thompson also testified he did not recall getting any information from Aggie Nora consistent with what Aggie Nora was saying Mitt Jones had told Baker. Thompson believes he would have recalled this information if it had been related to him. (Vol. XII, Tp 3251)

125. Aggie Nora Hunt testified she told Mr. Baker several times that Larry Jones was saying Rogers Locklear was going to kill Jackie. The last time she saw Larry Jones, he was supposedly on his way to talk to Lumberton police officers about money. This was the Friday Jones was murdered. She went to Jacksonville the next day and when she returned, there was a pair of green work pants, a green shirt, a pair of the work shoes and a bag of candy on her back steps. (Vol. X, Tp 2435) Annie Ruth

Hunt did not know who left those items on her back steps. The reason she did not call the police and report Jones missing when he did not come home on the 15th is because she thought Jones was being sent out of town by police. (Vol. X, Tp 2438) Aggie Nora Hunt testified Jones never said anything to suggest her brother was involved in the murder of Jackie Ransom. She denied ever telling Hunt that Jones was saying Hunt killed Ransom. (Vol. X, Tp 2439) Baker and Thompson kept telling her they were going to put her on the stand, but they never did. Aggie Nora Hunt said she begged Thompson to let her get on the witness stand. (Vol. X, Tp 2445) Aggie Nora Hunt discussed her brother's work history with Thompson and his life experiences while growing up. Thompson had her go to T.R. Driscoll and get a copy of an income tax check that Cummings had cashed. Thompson asked her about Carl Britt. She told Thompson that Hunt and Carl Britt were good friends and that they worked together. She thinks Baker went out and talked to Carl Britt. (Vol. X, Tp 2446) Annie Ruth provided the lawyers the name of Willie Bartley. She did this because Thompson said people had given a bad name to Hunt about working with him. (Vol. X, Tp 2447) She discussed Elwell and A.R. Barnes with Thompson and Baker.

126. Annie Ruth Hunt felt Thompson was a friend and she could talk to him. She met with him several times in his office and talked with him on the phone. Aggie Nora testified Thompson told her he was second man and that he worked for Baker. (Vol. X, Tp 2454) Aggie Nora testified that Baker told her she could not get on the stand because of her health problems. At the time of her brother's trial, she had rheumatoid arthritis, bad nerves and a weak heart. (Vol. X, Tp 2476) When she met with Thompson and Baker she told them about her brother's childhood. She told the lawyers about the yellow jaundice her brother had and who the doctor was. She advised the lawyers to get the records. The lawyers said it was a long time ago and it would be hard to get the records. (Vol. X, Tp

2481) She told the lawyers that Hunt was not supposed to drink whiskey. She discussed with the lawyers incidents where Hunt had gotten shot. She talked with them about the kind of trouble Hunt had been into. She told them about the way her mother had run off and left the family. (Vol. X, Tp 2481) The lawyers knew that Henry and his mother had made liquor. She advised the lawyers how hurt her father was when the mother left. She spoke with Thompson about her brother's work history at T.R. Driscoll.

127. Harvey Oxendine testified at the MAR hearing that he knew Hunt and he "wouldn't want no better friend in the world than Mr. Hunt." (Vol. X, Tp 2491) Defendant's Exhibit D is a medical record showing that Oxendine was seen at Southeastern General Hospital on September 8, 1984 at approximately 6:48, complaining of stomach pain. This document was admitted at the original trial. (Vol. X, Tp 2491) Oxendine testified that earlier that day he had been picking grapes with Hunt and Cummings. After picking grapes, his stomach began to hurt and Cummings took him to the hospital. Contrary to his testimony at the trial, at the MAR hearing Oxendine testified that when he got back from the hospital Hunt and some more guys were at the trailer. Oxendine testified that he is an alcoholic and he drinks every day if he can get it. (Vol. X, Tp 2499) On cross-examination, he testified that when he got back to the trailer there were three or four people sitting around. Buck and Babe and two more individuals. Initially he said he did not know their names. Later, when asked if one of them was Buddy Row, he said yes. Oxendine could not identify the fourth individual. (Vol. X, Tp 2503) Oxendine said nothing at the MAR hearing about Alvin Fields being at Hunt's trailer when he returned.

128. Oxendine testified that prior to trial, Hunt's lawyers came to see him. Nobody busted in on him and they were real nice to him. (Vol. X, Tp 2506) Oxendine initially testified on cross-examination that everything he said at Hunt's trial was true. Then, when advised that he had said Hunt was not at the trailer when he returned when he testified at trial, he denied

saying that at Hunt's trial. (Vol. X, Tp 2509) Oxendine testified whoever wrote the trial transcript made a mistake. (Vol. X, Tp 2521) At trial nobody threatened him to testify. (Vol. X, Tp 2521)

129. Oxendine said he remembered being cross-examined by the prosecutor and that he was truthful when he gave his answers. Oxendine testified that he had been drinking for two weeks prior to the MAR hearing. (Vol. X, Tpp 2525-2526) Oxendine drank a couple of beers the morning prior to his MAR testimony. Oxendine testified his current drunk had been ongoing since the past Monday a week ago. On re-direct Oxendine was shown a document which purported to be an affidavit he had signed. When asked by MAR counsel to identify his signature, he denied that the signature on the document was his. Oxendine's testimony at the MAR hearing was wholly without credibility and devoid of any evidentiary value.

130. Eldis Hunt, Henry Lee Hunt's sister, testified at the MAR hearing. She never Baker or Thompson. Eldis Hunt testified concerning her brother's social history, generally consistent with the social history given by her other brothers and sisters.

131. Timothy Ray Deese testified he was an employee of the Department of Correction. He first met Hunt between September 1981 and August 1982. Hunt was incarcerated at the Whiteville unit at that time and worked in kitchen. Hunt did not give him any difficulties and Hunt was respectful towards Deese as a guard. (Vol. XII, T)p 2853) Hunt adjusted to prison life alright. Deese saw Hunt again between January 1985 and April 1992. Deese worked with the road squad at that time. Hunt worked on the road squad, which is hard work. Deese initially said he witnessed an incident between Hunt and another inmate. Deese then said he didn't actually see the incident. According to Deese, another inmate who was skilled in Karate got into an altercation with Hunt. At the time, Hunt was allegedly taking up for another inmate's problems. Hunt was kicked above the eye and pulled

a shank, cutting the other inmate in the stomach. The inmate's intestines fell out. This occurred in the dormitory. (Vol. XII, Tp 2858) Deese did not actually witness the incident and his version of the facts and opinions concerning the same are of little evidentiary value in to this case.

132. Carl Britt, a roofer employed by T.R. Driscoll, testified he had worked with Hunt at that business in the 1980's. Britt did not have any problems with Hunt and Hunt was a good worker. He worked hard. (Vol. XII, Tp 2668) Hunt got along well with the other men. Hunt would borrow money from Britt to help other men buy food to eat. Britt worked with Hunt for about eight months. Britt did never got any report that people who worked with Hunt were afraid of him. (Vol. XII, Tp 2871) If Hunt were not incarcerated, Britt would hire him back today. Britt did not speak with Baker or Thompson.

133. Britt does not know if Hunt's lawyers contacted the owners of T.R. Driscoll. When Britt worked with Hunt, he saw no evidence that Hunt had a drug or alcohol problem. Hunt appeared to be an intelligent man. He could follow instructions and knew what he was doing. They assigned him difficult tasks, which he was able to carry out. Britt did not think there was anything wrong with Hunt. (Vol. XII, Tp 2874) Britt never observed anything about Hunt which would suggest Hunt was suffering from any mental or emotional problem.

134. William C. Hardin, also known as Sonny Hardin, is a self-employed brick mason. Hunt worked for Hardin in the early 1970's. Hardin never had any problems with Hunt. They would stay at some job sites over night and the crew would be put up in a trailer. Hardin has been in Hunt's presence when Hunt knew Hardin was carrying large amounts of money. (Vol. XII, Tp 2879) Hardin trusted Hunt and was not concerned about carrying large amounts of money around Hunt. Hardin never observed any mental or emotional problem about Hunt. Hunt seemed pretty solid and seemed to be an intelligent man, able to follow

instructions he was given. (Vol. XII, Tp 2882) During the time they worked together, he never saw Hunt drink anything.

135. Theodora Freeman, Hunt's daughter, testified at the MAR hearing. To her knowledge, she did not speak to Hunt's lawyers prior to his trial. She talked to Thompson during the trial and told him her husband was lying. (Vol. XII, Tp 2928) She told Thompson about the visit from Cummings. After Cummings left, Theodora Freeman said she asked her husband why Cummings was there. She said her husband told her that Cummings wanted to buy a gun.

136. Theodora testified that her father only met her husband, Jim Freeman, twice. The second time was when her father was getting ready to go to court. She did not visit her father because she and Cummings did not get along. During one visit, she and Cummings began arguing and had to be separated by her husband and father. Her father did not really know Jim Freeman, so they were never alone on the visits to Hunt's residence. (Vol. XII, Tp 2934) She never saw her father give Jim Freeman a gun. (Vol. XII, Tp 2934) In 1985, she did not have any criminal convictions. Since that time, she has had two assault charges. On cross-examination, when asked about the visit from Cummings, Theodora could not recall who came with Cummings on that visit. When asked if her aunt Annie Ruth was with Cummings, Theodora said she did not know her father's people that well. (Vol. XII, Tp 2948)

137. Ratley was called as a witness at the MAR hearing. Consistent with his trial testimony, he testified at the MAR hearing that prior to being polygraphed by law enforcement officers he told them he did not know anything about the murders. (Vol. XIII, Tp 3189) He did not want to come to court and testify against Hunt. He was contacted by Wilbert Hunt. Ratley was at his residence when Wilbert came to his house. Wilbert told him, "you know, they're trying to hang my brother." Wilbert then said, "Henry told me to tell you just to keep your mouth closed. Don't say nothing. You don't know nothing."

(Vol. XIII, Tp 3190) Ratley had also been by Hunt told on the night of September 14, 1984, when Larry Jones was murdered, that if asked to say he did not know anything about the matter. (Vol. XIII, Tp 3190) Prior to being called as a witness at the MAR hearing, Ratley was not given the opportunity to review his trial testimony. (Vol. XIII, Tp 3192) Since his testimony at Hunt's trial, he has not had a chance to review his statements prior to being called as a witness. Hunt was a friend of Hunt prior to the murder of Larry Jones. He was not threatened or coerced to testify at Hunt's trial by the State. (Vol. XIII, Tp 3119) He told the truth at Hunt's trial as best he was able. Also consistent with his trial testimony, Ratley testified at Hunt's MAR hearing that on the night of September 14, 1984, he saw Henry Lee Hunt fire a .25 semi-automatic pistol at Jones while seated in the back of the yellow Plymouth Valiant. (Vol. XIII, Tp 3196) He also testified at the MAR hearing consistent with his testimony at Hunt's trial that he saw Hunt pull Jones out of the car and, as Jones lay on the ground, fire shots into Jones' head. (Vol. XIII, Tp 3196)

138. Florence Locklear, also known as Minnie Locklear, testified at the MAR hearing. She recalled an evening in September 1984 when her father was arrested by police while driving with an open bottle of alcohol in the car. Jones was at her house that evening and she testified he left around midnight. (Vol. XIII, Tp 3391)

139. Florence Locklear was 17 years old in 1984. She had two other sisters, Velma and Maggie. She was unaware that her father and mother had any discussions about taking out an insurance on Ransom. (Vol. XIII, Tp 3203) She was not aware that her father pled guilty to any charges related to the death of Ransom. She did not know what her father was in jail for and thought her mother went to jail for bigamy. (Vol. XIII, Tp 3210) She previously gave a statement to law enforcement officers that on the evening of Ransom's death, her father was with her sisters, Velma and Maggie, at her aunt's residence. (Vol. XIII, Tp

3213) Her sister Maggie told her that on the night Ransom was killed, Maggie was with her father and Velma. When she and her mother got home around 11:00 that night, her father and sister were at home. To the best of her knowledge, her father stayed home the rest of the night. When she saw her father at 11:00 on September 8, 1984 he did not have blood on him. She has never seen her father with blood all over him. Her father never said anything about having killed Ransom. (Vol. XIII, Tp 3218) She never told Mitt Jones anything about her father coming home covered in blood. Gene Otis Hunt was not over at her house on September 14, 1984. Her father and Harry stayed at the house that night. (Vol. XIII, Tp 3229)

140. Bernice Cummings was called as a witness at the MAR hearing. Cummings was questioned about her knowledge of events to which she testified at Hunt's trial. At Hunt's trial, she was vigorously cross-examined by Hunt's trial counsel. Cummings' testimony at the MAR hearing was recollections of events that happened approximately ten years ago. Cummings acknowledged that when initially questioned by police, she did not tell them the truth about what she knew concerning Hunt's involvement in the Ransom and Jones murders. She is afraid of Hunt. From the time he went to prison on drug charges until she testified at trial, she was afraid of some of his family members. When she testified at Hunt's trial, to the best of her knowledge and ability she testified truthfully. (Vol. XIV, Tp 109)

Conclusions of Law

1. Pursuant to N.C.G.S. § 15A-1420, Hunt has the burden in this MAR of proving by a preponderance of the evidence every fact essential to support the motion. A defendant who seeks relief by a MAR must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears, in accordance with N.C.G.S. § 15A-1443.

CLAIM I

2. Claim I of Hunt's MAR alleges numerous individual errors occurred in his trial which, cumulatively, denied his right to due process, a fair trial, and freedom from cruel and unusual punishment. Hunt maintains individual errors were the result of an overall pattern of ineffective assistance of counsel. The law governing such a claim is well established. In North Carolina, a defendant alleging ineffective assistance of counsel must satisfy a two-part test. First, defendant must show that counsel's performance was deficient. This requires a showing that counsel made errors so serious that he was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, defendant must show that his counsel's deficient performance prejudiced the defense. *State v. Braswell*, 312 N.C. 553, 324 S.E.2d 241 (1985) (adopting two-part test of *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674 (1984)). This second prong requires a defendant to demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceedings. *Strickland*, 446 U.S. at 694, 80 L.Ed.2d at 698. The burden of proving these requirements is heavy because counsel is strongly presumed to have rendered effective assistance. *Id.* Indeed, our Supreme Court has consistently declined to second-guess defense counsel's trial strategy. *State v. Lowery*, 318 N.C. 54, 347 S.E.2d 729 (1986); *State v. Milano*, 297 N.C. 485, 256 S.E.2d 154 (1979), *overruled on other grounds by State v. Grier*, 307 N.C. 628, 300 S.E.2d 351 (1983) (trial counsel given wide latitude in matters of trial strategy).

3. Hunt claims his trial counsel failed to make necessary pre-trial motions, effectively prepare to cross-examine State witnesses, make necessary objections at trial, investigate penalty phase evidence, present evidence at penalty phase, argue effectively in summation and competently represent him on direct appeal. After making credibility determinations related to

witnesses present by Hunt at the MAR hearing and weighing the evidence before the Court, the Court concludes as a matter of law that Hunt has failed to meet the standard necessary to prevail on Claim I.

4. Hunt's trial counsel filed numerous pre-trial motions, many of the type typically filed in capital cases. Trial counsel obtained a private investigator and file a motion for a change of venue. As a result of their difficulty in locating and speaking to witnesses, they filed a motion to have the State produce critical witnesses. While they did not file motions *in limine* regarding the State's blood evidence and shovels, such motions would not have been successful. The evidence related to blood in the Plymouth Valiant and shovels was relevant to corroborate witness testimony. Hunt has failed to show his trial attorneys were deficient related to their pre-trial motion practice.

5. Thompson and Baker received statements of potential witnesses in pre-trial discovery. They read the statements, prepared an organizational summary and compared the statements for inconsistencies. The Court finds trial counsel's cross-examination of State's witnesses was entirely competent and brought considerable impeaching information to the attention of the jury. The Court concludes as a matter of law that Hunt has failed to show Thompson and Baker's preparation for a cross-examination was deficient.

6. Trial counsel made considerable efforts to interview critical State's witnesses. Their task in representing Hunt was made much more difficult due to witness intimidation initiated by Hunt. While they did not attempt to interview every potential witness, Hunt has failed to prove their performance was deficient. Clearly, Hunt has failed to show prejudice. Witnesses like Alvin Fields and Harvey Oxendine simply were not credible. The testimony of James Fields at the MAR, to the extent it contradicts his trial testimony, is not credible and probably is not true. By his own testimony, Fields was not coerced or unduly pressured by the State to testify he looked in the bag Wilbert Hunt delivered. The Fields trial testimony was cumulative of

substantial witness intimidation evidence produced by the State. The Court concludes Hunt has failed to prove Fields' trial testimony was false or that he was prejudiced by the failure of his trial attorneys to interview Fields pre-trial. Hunt has failed to prove his trial attorneys were deficient or he was prejudiced by the manner in which the attorneys prepared witnesses or prepared for cross-examination. As noted in *Waters v. Thomas*, 46 F.3d 1506, 1513 (1995):

> That other witnesses could have been called or other testimony elicited usually proves at most the wholly unremarkable fact that with the luxury of time and opportunity to focus resources on specific parts of a made record, post-conviction counsel will inevitably identify shortcomings in the performance of prior counsel.

But such alleged shortcomings do not amount to ineffective assistance of counsel.

7. Hunt's ineffective assistance of counsel claims related to penalty phase will be discussed more fully under Claim II. The Court concludes, for the reasons discussed above and under Claim II, Hunt has failed to show his trial attorney's performance was deficient. Moreover, any arguable deficiency can not survive the second prong of *Braswell* and *Strickland*. The State presented an overwhelming case of guilt at trial. Our Supreme Court so noted on remand from the United States Supreme Court. *State v. Hunt*, 330 N.C. 501, 411 S.E.2d 806, *cert. denied*, 112 S.Ct. 3045, 120 L.Ed.2d 913 (1992). This Court's independent review to the trial transcript and record leads to the same conclusion. Claim I of Hunt's MAR is denied.

CLAIM II (A)(1) AND (2)

8. Claim II (A)(1) and (2) of Hunt's MAR alleges ineffective assistance of counsel at the sentencing phase contending Thompson and Baker failed to develop mitigating evidence and failed to present any evidence at the sentencing phase. The claim alleges this deficiency prejudiced Hunt. An attorney representing

a capital defendant has a duty to make a reasonable investigation into potential mitigating evidence or a reasonable decision which makes a particular investigation unnecessary. *Strickland v. Washington* holds:

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations of investigation. In other words, counsel has a duty to make reasonable investigations or a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assess for reasonableness in all circumstances, applying a heavy measure of deference to counsel's judgments.

Strickland, 466 U.S. at 691.

9. Thompson investigated Hunt's social history by talking with Hunt and family members. While Thompson did not know all the social information Hunt listed in the MAR, Thompson's investigation of Hunt's social history was clearly reasonable and sufficiently complete to support his strategic decision to not present social history evidence at the sentencing phase. The testimony of Aggie Nora Hunt shows she discussed her brother's social history with Thompson. Thompson testified he also discussed this topic with Hunt. Hunt rejected utilizing a psychiatrist leaving siblings as the vehicle to present social history evidence. Thompson's decision to not present the evidence can not be faulted. Family members did not want to testify and Thompson could reasonably foresee family members would be cross-examined about: (1) Hunt's criminal record; (2) violence by Hunt towards family members; (3) the involvement of Hunt and siblings in attempts to obstruct justice and intimidate witnesses; and (4) matters corroborative of the State's case. Thompson was also concerned about what other

doors this evidence would open. Thompson's investigation into Hunt's social history and his decision not to present social history evidence at the sentencing phase were reasonable.

10. Hunt rejected the option of utilizing a psychiatrist. There is no constitutional basis for a rule which would require a psychiatric evaluation in every capital case. *Clanton v. Bair*, 826 F.2d 1354, 1358 (4th Cir. 1987). Courts of review have not set out a sweeping rule regarding what degree of psychiatric investigation will satisfy the performance element of the *Strickland* standard; undoubtedly that will vary with the facts of each case. *Poyner v. Murray*, 964 F.2d 1404 (4th Cir. 1992). *Poyner* acknowledged the danger a defense attorney faces when delving into the "risky realm of psychological mitigation evidence." The cooperativeness of the client is a factor in determining the reasonableness of the attorney's efforts. *Gardner v. Dixon*, No. 91-4010 (4th Cir. June 4, 1992). When a seemingly lucid and rational client rejects the suggestion of a psychiatric evaluation and there is no indication of a mental or emotional problem, a trial lawyer may reasonably forego insistence upon an examination. *Clanton* at 1358.

11. Thompson spoke with Hunt about utilizing a psychiatrist. Hunt seem offended by the suggestion and rejected the option. Thompson and Baker talked with Hunt and his family members but found no evidence that Hunt suffered any emotional or mental disturbance. Hunt had no prior record of treatment at any mental or substance abuse facility. Hunt appeared lucid and rational and could recall relevant events in the past. He appeared to be an intelligent man. Considering all the circumstances confronting Thompson and Baker, the decision to not utilize a psychiatrist at penalty phase was reasonable. Hunt has not met his burden under the first prong of *Strickland*. Moreover, after hearing Dr. McDaniel's testimony at the MAR hearing, the Court is satisfied beyond a reasonable doubt psychiatric evidence of the nature presented would not have altered the outcome of the proceeding if the analysis proceeded

to the second prong of *Strickland*. Ultimately, Dr. McDaniel did not know what was going through Hunt's mind at the time of the murders. At the sentencing phase, the jury had already convicted Hunt of a contract killing and a witness elimination murder. The State presented credible evidence of attempts by Hunt to intimidate witnesses prior to trial. The facts before the jury at guilt phase simply belie the possibility any reasonable juror would conclude any arguable impaired capacity or a mental or emotional disturbance mentioned in Dr. McDaniel's testimony could have had anything to do with the murders of Ransom and Jones or mitigated those acts in any way. Dr. McDaniel's diagnosis was rebutted by evidence at the trial and MAR hearing. MAR evidence from co-workers who were with Hunt for extended periods of time tends to establish Hunt was an intelligent man who could carry out assigned tasks and gave no appearance of suffering from any mental or emotional disturbance. Utilizing Dr. McDaniel as a vehicle to present social history had double edged consequences. While she testified to arguably mitigating type evidence, she also testified to abusive and violent traits of Hunt which would have been harmful before the jury. Any competent evaluation has to include criminal history. Hunt's criminal history would not have helped his cause. The Court concludes Hunt did not suffer ineffective assistance of counsel as a result of the decision to not utilize a psychiatrist.

12. Thompson and Baker did not get Hunt's medical, school or prison records. The Court concludes trial counsel's failure to obtain these records did not prejudice Hunt considering all the circumstances confronting Thompson and Baker. Thompson knew about Hunt's criminal history, which is significant. In addition to the crimes Hunt had been convicted of, Thompson and Baker knew of a serious assault Hunt committed in prison. They did not want his entire criminal history or the details of crimes to come out before the jury. The decision to not present evidence prevented much of Hunt's

criminal activity from getting before the jury. Thompson was not advised until trial of any medical problems in Hunt's history. By that time, the decision to not present evidence at penalty phase had effectively been made. Thompson and Baker did not obtain school records. The Court concludes Hunt's trial attorneys were not, considering all the circumstances confronting them, deficient in failing to obtain medical, school or prison records. In the alternative, if their performance was deficient in this regard, Hunt did not suffer prejudice. The evidence of guilt was overwhelming. All the evidence showed Hunt was the trigger man in both murders. The aggravating circumstances were strong and convincingly established. In the Ransom case the aggravators found were: (1) a prior conviction of a felony involving the threat of violence to the person; and (2) pecuniary gain. In the Jones murder, the aggravators found were: (1) a prior conviction of a felony involving the threat of violence to the person; and (2) the murder was committed for the purpose of avoiding or preventing a lawful arrest. The prison records contained highly damaging evidence about Hunt. Not only had he been incarcerated for most of the time between 1964 and 1981, he had several infractions including two assaults, one resulting in serious injury to a fellow inmate. Hunt's record also included at least one parole violation. Details of criminal activity contained in the prison records tended to contradict the testimony of Dr. McDaniel. Medical and school records were of little mitigating value in comparison to the facts of the case and weight of the aggravating circumstances. The court concludes Hunt did not suffer ineffective assistance of counsel as a result of his trial attorneys' failure to obtain medical, school and prison records.

13. Hunt also claims Thompson and Baker should have presented evidence of his work history. Baker talked with an employer and determined the employer would testify to both positive and negative aspects of Hunt's work history. Assuming trial counsel did not investigate further, the Court cannot say

their efforts were deficient. Baker personally knew the employer he talked with. It was reasonable for Baker to believe the employer's evaluation was accurate. Assuming the analysis reached the second prong of *Strickland*, the Court concludes beyond a reasonable doubt that had the work history presented at the MAR been presented at trial, the results would not have been altered. For the reasons discussed in conclusion 12 above, the decision to not present Hunt's work history was not prejudicial.

14. Claims II(A)(1) and (2) of Hunt's MAR are denied. 'Thompson and Baker's decision to not present evidence at penalty phase was reasonable. Hunt had rejected utilizing a psychiatrist. Neither Hunt nor his family members wanted to testify. Hunt's criminal record was significant and the details of the offenses had not come out. Thompson and Baker were confronted with putting on reluctant family members many of whom were linked to attempts to destroy evidence and intimidate witnesses. These problems were caused by Hunt. Moreover, Hunt's record contained prior bad acts which were not the subjects of convictions and the attorneys knew from discovery the State was going to try and link Hunt to other murders. They were concerned about opening the door. Thompson and Baker's performance at sentencing phase was not deficient. Any arguable errors did not prejudice Hunt.

CLAIM II(B)

15. Claim II(B) alleges Thompson's closing argument at the penalty phase was presumptively prejudicial. The Court has reviewed Thompson's closing argument and finds it contains many conventional arguments often heard in death penalty cases. Thompson connected himself with Hunt telling the jury he was "proud to be in a position ... that I can speak to save somebody." He acknowledged the sorrow of the victim's loved ones but point out Hunt also had a family and the jury could exercise its choice to let him live. Thompson argued life imprisonment was substantial punishment and that any aggravating circumstances the jury may find simply were not substantial enough to warrant

the death penalty. The Court concludes in the context of Thompson's argument, he did not concede the existence of any aggravating circumstance. Thompson pointed out that the punishment for the instigators', Dottie and Locklear, was unknown. The point being why should Hunt be punished more harshly than others of arguably equal culpability. Thompson pointed out each individual juror had to make up his or her own mind and that he knew from jury selection that some of the jurors had only recently formed their belief that capital punishment was appropriate. This argument appealed to individual jurors to make up their own mind even if the individual's views were not consistent with the majorities'. Thompson argued that death was not consistent with objectives of punishment like rehabilitation.

16. While Thompson's argument clearly questioned whether capital punishment had any place in a civilized society, his argument was far from an all out attack on the death penalty. In the context of this case, Thompson's argument was professionally reasonable and incorporated conventional subject matter often used in capital cases. *McDougall v. Dixon*, 921 F.2d 518 (4th Cir. 1990) Hunt has failed to prove Thompson's argument was either deficient or prejudicial. Claim II(B) is denied.

CLAIM II(C) (1), (2), (3) and (4)

17. Claim II(C) alleges Hunt suffered ineffective assistance of counsel as a result of his trial attorney's failure to (1) object to alleged improper closing arguments by the prosecutor; (2) take appropriate action to sever the sentencing hearing of Hunt and Barnes; (3) prevent the introduction of evidence of the dynamiting charge; and (4) object to certain sentencing phase instructions.

CLAIM III(C)(1)

18. Concerning the alleged failure to object to arguments of the prosecutor, Hunt failed to prove at the MAR hearing that the attorney's failure to object was not the product of a reasoned trial

decision. For this insufficiency of the evidence, this claim is denied. Alternatively, the claim also fails on the merits because the arguments in question were not improper or prejudicial. The biblical references did not suggest that the jury, prosecutor or death penalty law were ordained by God. It did not suggest to the jury that they were not responsible for the sentencing decision. Similar arguments were found to not be prejudicial in *State v. Brown*, 320 N.C. 179, 206, 358 S.E.2d 1, *cert. denied*, 98 L.Ed.2d 406 (1987) On this additional ground, the claim related to this aspect of the prosecutor's argument is denied.

19. Hunt next contends the prosecutor improperly argued the jury had a duty to impose the death penalty. To the contrary, the prosecutor emphasized that the sentencing procedure contained guidelines called aggravating and mitigating circumstances and it was necessary that the jury follow the trial court's instructions. The Court concludes this argument was not improper and counsel's failure to object was not deficient nor the argument prejudicial.

20. Hunt next claims the prosecutor made improper references to parole. The Supreme Court ruled on direct appeal that the prosecutor's argument did not suggest the possibility of parole in so direct a manner as to be prejudicial. *Hunt*, 323 N.C. at 428. Accordingly, the trial attorney's failure to object was not deficient nor the argument prejudicial.

21. The last argument Hunt contends was improper was the prosecutor's reference to Hunt's lack of remorse. The virtually identical argument was found to not be prejudicial in *State v. Brown*, 320 N.C. at 199. Accordingly, the trial attorneys performance was not deficient and Hunt did not suffer prejudice.

CLAIM II(C)(2)

22. Concerning Hunt's claim his trial attorneys were ineffective for failing to move to sever his sentencing hearing from Barnes, Hunt did not produce any evidence on this claim at the MAR and the same is denied. Alternatively, the claim is

meritless because the Court concludes joinder was proper, any motion to sever at penalty phase would have been fruitless and the trial court's instructions directed the jurors to give separate attention to each co-defendant. On direct appeal, our Supreme Court found joinder was not prejudicial. During the penalty phase instructions, the jury was instructed that it "must separately consider aggravating and mitigating circumstances as to each defendant." (Tp 4126)

At the sentencing phase, the jury had already found Hunt guilty of two first-degree murders. All the evidence showed Hunt was the trigger man. The jury recommended death sentences for both Hunt and Barnes. In light of these facts, it would be sheer speculation to suggest that giving up last argument to Barnes or the fact Barnes presented evidence at sentencing had any impact on the jury's recommendation. Claim II (C)(2) is denied.

CLAIM II (C)(3)

23. The trial attorneys' performance concerning the dynamiting charge was not deficient. Thompson successfully got the trial court to instruct the jury to disregard the evidence. Our Supreme Court held on direct appeal Hunt was not prejudiced by the evidence. *Hunt*, 323 at 430. Claim II (C)(3) is denied.

CLAIM II (C)(4)

24. The Court has reviewed the penalty phase instructions to which Hunt contends his trial attorneys should have objected. The instructions were proper and not objectionable. The trial attorney's failure to object was not deficient and Hunt suffered no prejudice. Claim II (C)(4) is denied.

CLAIM III

25. Claim III has previously been ruled procedurally barred.

CLAIM IV

26. Claim IV alleges the State failed to disclose exculpatory evidence. The MAR alleges, based on a newspaper article

supposedly quoting a Lumberton Police Captain, that a confidential informant indicated that A.R. Barnes was the last person seen with Ransom. Hunt did not call any Lumberton Police Captain at the MAR hearing or produce any evidence on this claim. It appears from the evidence that information from one Rosemary Hunt led investigators to question A.R. Barnes. Rosemary Hunt testified at Hunt's trial. She last saw Ransom leave the Mark IV around 5:00 p.m. the day before his body was discovered. Investigators also had a statement from Betty Hammonds, Ransom's girlfriend, stating Hammonds last saw Ransom leave the Mark IV just before dark on September 8, 1984 with an Indian male approximately 50-60 years old. This statement was provided in discovery. A.R. Barnes is Hammonds' cousin but she could not identify the person Ransom left the Mark IV with. Former SBI Agent Sampson testified Hammonds' description would fit Elwell Barnes. Although Elwell would also be a cousin, Elwell had spent most of his life in prison serving a first-degree murder sentence. There is no evidence Hammonds knew Elwell. Hammonds' description would fit Elwell and was consistent with the bar owner's trial identification of Elwell as the person she saw in the bar talking with Ransom on the day of his murder.

27. A. R.'s confession to Ransom's murder was before the jury. As documented in the findings of fact, the alleged confession is not believable as it is not supported by the physical evidence. There was also evidence before the jury that Ransom left the bar with an older Indian male. The description could arguably fit either A.R. or Elwell Barnes.

28. The insufficiency of Hunt's evidence on this claim and the evidence discussed above renders the claim meritless.

29. At the close of the MAR hearing, MAR counsel moved to amend the claim to include the State's alleged failure to disclose evidence that Jones never told law enforcement officers Hunt killed Ransom. The Court concludes this is not exculpatory evidence under *Brady v. Maryland*, 373 U.S. 831 (1963).

Moreover, the trial attorneys knew from interviewing Aggie Nora Hunt that she would say Jones told her Locklear was involved in Ransom's murder. This was consistent with the State's case, Locklear was involved. Cummings testified Hunt was angered that Jones was running his mouth about both the Evers larceny and Ransom murder. Jones' failure to name Hunt in discussions with investigators is not exculpatory evidence. It does not tend to show Hunt was not the killer. Under the facts of this case, the information Jones was providing investigators provided a motive for Hunt to murder Jones. Consequently, the evidence is inculpatory. The amended *Brady* claim is meritless and denied. All aspects of Claim IV are denied.

CLAIM V

30. Claim V has previously been ruled procedurally barred.

CLAIM VI

31. Claim VI has previously been ruled procedurally barred.

CLAIM VII

32. Claim VII has previously been ruled procedurally barred.

CLAIM VIII

33. Claim VIII alleges Hunt's constitutional and other rights were violated by the absence of relief on meritorious pre-trial motions and by pre-trial omissions by trial counsel. The claim is divided into 11 sub-claims. Claims VIII (2), (3), (4), (5), (6), (7), (8) and (9) have previously been ruled procedurally barred.

34. Claim VIII(1) alleges Hunt's trial counsel failed to move for an expert psychiatrist and failed to make effective use of the investigator they obtained. For the reasons discussed under Claim II related to Thompson and Baker's decision not to obtain a psychiatrist, this aspect of Claim VIII(1) is denied.

35. Thompson and Baker planned to use their investigator to locate and interview witnesses. Their plans for utilization of their investigator were thwarted primarily by a lack of

information from Hunt and witness intimidation initiated by Hunt. The trial attorney's utilization of their investigator was not deficient. All aspects of Claim VIII(l) are denied.

36. Under Claim VIII(10) and (11), Hunt alleges the trial court erred in denying his motion for grand jury information and trial counsel erred by not moving to sequester the witnesses, respectively. Hunt did not present any evidence related to Claim VIII (10) at the MAR hearing. Grand jury proceedings are secret. N.C. G. S. § 15A-623. The unsupported allegations in the MAR are sheer speculation. Claim VIII (10) is denied.

37. Essentially all the evidence at the MAR hearing tended to show that except for law enforcement officers, the State's witnesses were not in the courtroom when other witnesses were testifying and the in court testimony was not reported to witnesses waiting to testify. A motion to sequester witnesses is within the sound discretion of the trial court. Claim VIII (11) is denied.

CLAIM IX (A)(1) THROUGH (4)

38. Claim IX (A)(1) through (4) allege repeated violations at guilt phase of Hunt's rights. Claim IX (A)(2) has previously been ruled procedurally barred. After reviewing claims IX (A)(1), (3) and (4) and considering the evidence at the MAR hearing, the Court concludes they are also procedurally barred. Hunt's ineffective assistance of counsel claim is not sufficient to excuse the default. Alternatively, the claims also lack substantive merit.

CLAIM IX (A)(1)

39. Claim IX (A)(1) contends and the trial court erred by not allowing Baker to cross-examine Oxendine. The trial transcript does not support this contention. At Baker's request, the trial court allowed *voir dire* of Oxendine prior to considering Baker's motion to have him declared hostile. Following *voir dire*, although the court denied the motion to declare Oxendine hostile, the court agreed to allow "a rather broad way to refresh

his memory." (Tp 3602). When testimony resumed, Baker was effectively allowed to lead the witness. (Tp 3605). This claim is procedurally barred and, in the alternative, is denied on the merits.

CLAIM IX (A)(3)

40. This claim argues gory photographs were admitted which were excessive and irrelevant. For the reasons discussed in the proceeding claim, this claim is procedurally barred. In the alternative, the claim is denied on its merits. The photographs were not excessive or prejudicial considering this was a double murder case.

CLAIM IX (A)(4)

41. This claim alleges evidence related to shovels and soil analysis should not have been introduced. This claim is procedurally barred. In the alternative, it lacks substantive merit. Evidence related to the shovels was relevant to corroborate witnesses. The soil analysis was inconclusive and did not prejudice Hunt. This claim is denied.

CLAIM IX(B)

42. This claim alleges trial counsel failed to object to other errors at trial and failed to renew objections. The claim is procedurally barred. Alternatively, the court has reviewed the alleged errors referenced in the MAR and finds them without merit. This claim is denied.

CLAIM IX(C)

43. This claim alleges trial counsel failed to present more than one closing argument at guilt phase and erred in allowing the prosecutor to make the final argument. Hunt presented evidence at guilt phase. This claim is procedurally barred. In the alternative, it fails on the merits. The prosecutor was entitled to make the final argument at guilt phase. *State v. Gladden*, 315 N.C. 398, 418, 340 S.E.2d 673, *cert. denied* 479 U.S. 871 (1986).

CLAIM X

Claim X has previously been ruled procedurally barred.

CLAIM XI

This claim alleges Thompson and Baker provided ineffective assistance of counsel on appeal. MAR counsel has failed to point out any specific error in appellate representation which this Court can conclude was professionally deficient. All errors alleged in the MAR have been considered by the Court. Moreover, the Court finds Hunt was not prejudiced by the representation he received on appeal. Thompson and Baker filed a motion for complete recordation which was granted with the exception of bench conferences. N.C.G.S. § 15A-1241 (a) was not intended to disturb the time-honored practice of off-the-record bench conferences between trial judges and attorneys. *State v. Lee*, 335 N.C. 244, 439 S.E.2d 547 (1994). Both trial attorneys testified that if a matter occurred off the record which they deemed prejudicial to their client, they would have reconstructed it on the record. To their knowledge, no such incident took place. The redaction of A.R. Barnes recantation is easily reconstructed by reconciling the original to the redacted version. The Court concludes Hunt has failed to prove his trial attorneys provided ineffective assistance of counsel on appeal. This Claim is denied.

CLAIM XII

Claim XII has previously been ruled procedurally barred.

CLAIM XIII

Claim XIII has previously been ruled procedurally barred.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

(1) Hunt's MAR be and hereby is in all respects denied;

(2) Hunt is remanded to the custody of the Department of Correction pursuant to the convictions and judgments imposed by Judge Clark;

(3) The Clerk send copies of this Order to the parties shown on page one; and

(4) This case shall be placed on the next available criminal calendar for the setting of a new execution date.

This the 16 day of September, 1996

/s/
B. Craig Ellis
Superior Court Judge

No. 5A86-8 SIXTEEN-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA

V From Robeson

HENRY LEE HUNT (85CRS9428-9430)

****

ORDER

Upon consideration of the petition filed by Defendant in this matter for a writ of certiorari to review the order of the Superior Court, Robeson County, the following order was entered and is hereby certified to the Superior Court of that County:

"Denied by order of the Court in conference, this the 10th day of April 1997.

s/ Orr, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 11th day of April 1997.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

Marvea J. Francis
Assistant Clerk

Copy to:
Mr. D. Stuart Meiklejohn, Attorney at Law, For Hunt
Mr. G. Patrick Murphy, Special Deputy Attorney General, For State
Mr. L. Johnson Britt, III, District Attorney
Ms. Joann Locklear, Clerk of Superior Court
Mr. Ralph A. White, Appellate Court Reporter
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NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ROBESON COUNTY	SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA, Plaintiff, vs HENRY LEE HUNT, and ELWELL BARNES, Defendants.	No. 85-CRS-4546, 4547 No. 85-CRS-9428, 9430 No. 84-CRS-15955 No. 85-CRS-1059 No. 85-CRS-9429 No. 85-CRS-14548

SUPERIOR COURT CRIMINAL SESSION

NOVEMBER 18 THROUGH DECEMBER 20, 1985

HONORABLE GILES R. CLARK, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

For the State:	JOE FREEMAN BRITT District Attorney Sixteenth Judicial District Robeson County Courthouse Lumberton, North Carolina
For Defendant Hunt:	ANGUS B. THOMPSON, JR. Attorney at Law Lumberton, North Carolina (AND) H. MITCHELL BAKER, III Attorney at Law Lumberton, North Carolina
For Defendant Elwell Barnes:	BRUCE W. HUGGINS Attorney at Law Lumberton, North Carolina
For Defendant A. R. Barnes:	DONALD BULLARD Attorney at Law Pembroke, North Carolina
Reported by:	WILLIAM N. STORMS Official Reporter P. O. Box 372 Lumberton, North Carolina

VOLUME IX OF 14 volumes - PAGE 2457 THROUGH 2763

Q. (By Mr. Britt:) All right. What, if anything, did you hear Buck say?

A. Just said Larry Jones was out running his damn mouth and he were going to have to put a stop to his damn mouth.

Q. Running his mouth about what?

A. About Jackie. He said Jackie Ransom.

Q. All right. Now, do you know where Larry Jones was living at this time?

A. Yes, sir.

Q. Where?

A. Over to Aganora's.

Q. Over where?

A. Over to Aganora's, Buck's sister.

Q. Do you know how long he had been living with Aganora, or at Aganora's house?

A. No, sir.

Q. Now, after that took place, did anyone else come up to the house or trailer?

A. Yes, sir. Timmy Hunt, Aganora's son.

Q. That's whose son?

A. Aganora's son.

Q. All right. Now, when Timmy came up to the house, what, if anything, took place?

A. He came over there running his mouth about Larry was —

MR. BAKER: Object.

Q. Don't tell us what Timmy said, but did you see Buck and Timmy do anything?

A. Yes, sir.

Q. What did they do?

A. Buck asked —

MR. BULLARD: Object as to A. R. Barnes.

MR. HUGGINS: Yes, sir. As to Elwell Barnes.

THE COURT: Again, Members of the Jury, consider this only as to the defendant Henry Lee Hunt, and not as to either of the other defendants.

Q. (By Mr. Britt:) Okay. Go ahead.

A. Henry Lee Hunt asked Timmy where was Larry Jones at, and he said he knewed where he was at, and he told him to carry him, show him where the ratting, water-head son-of-a-bitch was at.

Q. All right. Go ahead. So Buck got the shotgun and he put it in the trunk of the car and I drove my car and Timmy got in his car.

Q. Okay. Now, when Timmy got in his car and you got in your car, who got in the car with you?

A. Me and Buck.

Q. All right. Was anybody in the car with Timmy?

A. No, sir.

Q. All right. What did Timmy do?

A. We drove to Aganora's house and left my car there at Aganora's and we got in Aganora's car.

Q. All right. Now, who got in Aganora's car there at Aganora's house?

A. I did, and Henry Lee Hunt and Timmy Hunt.

Q Okay. Now, when you got in Aganora's car, who was driving?

A. Timmy was.

Q. Okay. And where were you seated?

A. In the back seat.

Q. And where was Timmy seated?

A. He was driving.

Q. Pardon me?

A. He was driving.

Q. All right. Now, did you hear Buck say anything as you left in that car?

MR. HUGGINS: Object as it applies to Mr. Elwell Barnes.

MR. BULLARD: And A. R. Barnes.

THE COURT: Again, Members of the Jury, you will consider testimony as to any statements or conversations allegedly made by the defendant Henry Lee Hunt only as to the defendant Henry Lee Hunt, and not consider it as to either of the other defendants as evidence in the case.

Proceed.

Q. (By Mr. Britt:) Did you hear Buck say anything in the car as Timmy was driving and you were sitting in the back seat?

A. No, sir. Just we have —

Q. Well, where did you go, then?

A. Timmy carried us — carried me and Buck over there to show where Larry was at.

Q. And what is that near here in Lumberton; is you know?

A. Over there form the Old Foundry.

Q. Do you know where Rogers Locklear lives?

A. Yes, sir.

Q. Or lived at that time?

A. Yes, sir.

Q. How close was that area to where he lived at that time?

A. All I know, back there behind the old fair grounds.

Q. Okay. As you were driving around the old fair grounds, did you see anybody standing out on the road?

MR. HUGGINS: Object to leading.

THE COURT: Sustained.

Q. (By Mr. Britt:) All right. What, if anything, did you see or do as you were driving around over near the old fair grounds?

A. See Larry Jones standing out there at Rogers Locklear's house, standing out there in the yard.

Q. All right. Now, when you saw Larry standing out there, what, if anything, did Buck say?

MR. HUGGINS: Object to that statement as it relates to Mr. Elwell Barnes.

MR. BULLARD: Also as to A. R. Barnes.

THE COURT: All right, then. Members of the Jury, you will consider the statement allegedly made, if any, by the defendant Henry Lee Hunt only as to the defendant Henry Lee Hunt. You will not consider it as to either of the other defendants.

Q. (By Mr. Britt:) What did he say when he saw Larry standing there?

A. He said, "There's the ratting, sorry son-of-a-bitch."

Q. Okay. Well, what happened, then?

A. Well, we left and went back to Aganora's.

Q. Okay. Now, when you got back to Aganora's, what did you all do?

A. We went in the house.

Q. Okay. And when you got in the house, what, if anything, happened in there?

A. Had a conversation with Larry Jones.

Q. Okay. What, if anything, did you hear Buck say?

MR. HUGGINS: Object as it applies to Elwell Barnes.

MR. BULLARD: And A. R. Barnes.

THE COURT: Again, Members of the Jury, you are to consider this testimony as to any statement allegedly made by the defendant Henry Lee Hunt only as to the defendant Henry Lee Hunt, and not consider it as to either of the other defendants.

Q. (By Mr Britt:) What, if anything, did you hear Buck say?

A. Buck said he was going to put a stop to his damn mouth.

Q. What else did he say?

MR. HUGGINS: Object.

THE COURT: Overruled.

THE WITNESS: Say he was going to kill him.

Q. Did he say why he was going to kill him?

A. Yeah, because he knowed about him killing Jackie Ransom.

Q. And what else did he say?

A. We left.

Q. Did he say what Larry could do for him?

MR. THOMPSON: object.

MR. HUGGINS: Object to leading.

THE COURT: Sustained on leading.

Q. (By Mr. Britt:) Did he say anything else, Bernice?

A. When he got back in the car, he said —

MR. THOMPSON: Object.

THE WITNESS: — Larry could get him a life sentence.

THE COURT: Overruled.

Q. (By Mr. Britt:) Said what?

A. Larry Jones could get him a life sentence.

NORTH CAROLINA

ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 85 CRS 9428
and 85 CRS 9430

STATE OF NORTH CAROLINA,
Plaintiff,
vs.
HENRY LEE HUNT,
Defendant.

VOLUME VII

TRANSCRIPT

Transcript of the hearing on the Motion for Appropriate Relief taken at the September 21 and 22, 1994 sessions of Superior Court before the Honorable B. Craig Ellis, Judge Presiding.

APPEARANCES:

For the State: G. PATRICK MURPHY
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Reported by: Shannon Heineman, CSR, RPR
Court Reporter
1107 Gigi Street
Fayetteville, NC 28311

Q. Okay. Had — had you or Mr. Stogner told Larry Jones that if he came up with information leading to the arrest of Rogers Locklear for the death of Jackie Ransom, that he would be paid any sort of reward for that?

A. I don't recall a reward — a reward being offered at that time.

Q. Okay. But do you recall any discussions with Mr. Jones about whether he would derive any sort of financial benefit if he provided information?

A. I don't recall. I know in some cases the governor does post a reward after a certain period of time, but I don't think one was posted in this case.

Q. Okay. Do you recall whether you or Mr. Stogner gave any money to Mr. Jones apart from a reward that the governor, would authorize?

A. I don't recall giving any.

Q. Okay. Now, in the — in the second conversation that you had with Mr. Jones, the one prior to the 14th, did he have any further information for you, sir, about how Jackie Ransom died and who did it?

A. After the 14th?

Q. I'm sorry, sir. The — the conversation between the first one you had, which your best recollection is it was on the 11th, and then I think the third time you talked to him you said was on the 14th?

A. I think so.

Q. And I'm just curious about that — that sort of in-between conversation. Do you recall what day that occurred, the second of the three?

A. I believe we talked to him about every day between 11, 12, 13, 14. I believe we talked to him maybe at some point —

Q. Okay.

A. — briefly.

Q. Okay.

A. And —

Q. I'm sorry. I didn't mean to cut you off. Your best recollection is that on each of those occasions, you took some notes of some form about what it was that he was telling you?

A. Yeah, probably jotted down something he had said.

Q. Did Mr. Jones ever express any concern to you that if — if Rogers Locklear found out what he was doing, that he would be in personal danger?

A. Not that I recall.

Q. Okay. Did Larry Jones on any of the occasions that you spoke with him during the week before he died, on the 14th or whenever he died, tell you that Rogers Locklear had plotted the death of Jackie Ransom?

A. I don't — I don't remember him telling us that.

Q. Okay. Did Larry Jones provide you with any useful information in that week?

A. I don't remember him telling us anything. We just, since he was in that environment with the family there, thought maybe he might hear something either on the street or talking with Rogers' family — Rogers Locklear's family or whatever. Just sort of a confidential informant.

* * *

MR. MURPHY: Your Honor, I was asked for those before lunch, and I looked in the SBI file during lunch, and I have got the SBI file containing Larry Jones's — this witness's interview with Larry Jones. I don't think it was covered by the discovery order. I'll be glad to hand it up to Your Honor for your review of — of this part of it because I was asked about it and let you make a determination as to whether it's exculpatory or not. The state contends it's not exculpatory.

(Mr. Murphy hands the Court a document. The Court reads the document.)

THE COURT: All right, sir. Well, I've had a chance to read this document. Again, I'm somewhat at a disadvantage of not knowing what the

testimony in the trial is as to who did what and who all of the actors were and how they interplayed with one another, so I'm not sure whether it would be exculpatory or not based on not knowing all those facts. Having read it though, I don't see any harm with the defense having it because there might be something that they might point out that is — that they might consider that I don't see being exculpatory or inculpatory. The defendant is not mentioned as I read through this in any way.

A number of the — of the people who have been talked about, however, are mentioned here, and so there might be something that someone might point out that they feel is exculpatory. So let's go ahead and provide it to the defense so that they can — can look at it if you would, please, sir.

NORTH CAROLINA

ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 85 CRS 9428
and 85 CRS 9430

STATE OF NORTH CAROLINA,

Plaintiff,

vs.

HENRY LEE HUNT,

Defendant.

VOLUME VIII

TRANSCRIPT

Transcript of the hearing on the Motion for Appropriate Relief taken at the September 26, 1994 session of Superior Court before the Honorable B. Craig Ellis, Judge Presiding.

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Reported by: Shannon Heineman, CSR, RPR
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Q. How many times had you talked to Larry Jones before that Friday?

A. The week between the — the almost week between the discovery of Ransom's body and that Friday afternoon when I talked with him probably almost every day.

Q. Okay. On one occasion, you went to find him at Aggie Nora Hunt's house?

A. At least on one, yes, sir.

Q. Okay. That was the house on Second Street near P.J.'s Convenience Store?

A. Yes, sir.

Q. Okay. But you're quite certain on that occasion you didn't tell her why you were there?

A. Well, I didn't say that. I may have told her I was there to talk to Larry or something along those lines. I would not — I'm certain I did not tell her what if anything Larry was telling us. I may have said what do you know about this or what's Larry telling you, but I would not have divulged to her anything Larry had told me.

Q. Okay. And you don't recall what answer, if any, she gave to the question about what he had been saying to her?

A. No, sir. No, sir.

Q. Okay. So your recollection — was the meetings that you had with Larry Jones, did they begin on the same Sunday that Jackie Ransom's body was found?

A. No, sir. I think they probably begin that — probably that Monday. They did not begin that Sunday I know.

Q. Okay. How was it that you came to talk to Larry Jones?

A. I knew of Larry from working in the community. If I'm not badly mistaken, I think Agent Sampson introduced me to Larry during the investigation.

Q. Okay. Did — did you — did you learn from Agent Sampson how it was that he thought that Larry had something to divulge about the case?

A. If I remember correctly, he was telling us that he knew who did it.

Q. Okay. And what do you recall Larry Jones saying to you in the meetings you had with him during that week about what it was he knew or said he knew?

A. He was telling us that he would find out and — the first meeting I think he led us to believe that he knew who did it. As I recall as meetings went on, he was telling us he would find out — he would work for us and find out who did it. He was in what we considered the click of people he needed to be in to find out. He hung out at the Mark IV. He knew or appeared to know most of the people involved. However, at the time of his death, he had not given us any names of anyone.

Q. Had he mentioned Rogers Locklear to you?

A. No, sir. He — well, I mean he may have mentioned knowing him but he never said Rogers Locklear did this murder. He never said anyone did it. He never gave us a name of who did the murder.

Q. Did he say that Rogers Locklear had had any involvement in the murder?

A. As I recall, he said he thought Rogers Locklear had Jackie Ransom killed.

Q. Okay. Did he mention Rogers Locklear's wife and Jackie Ransom's wife, Dottie?

A. Yes, sir.

NORTH CAROLINA ROBESON COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NOS. 85 CRS 9428 and 85 CRS 9430
STATE OF NORTH CAROLINA, Plaintiff, vs. HENRY LEE HUNT, Defendant.	VOLUME X TRANSCRIPT

Transcript of the hearing on the Motion for Appropriate Relief taken at the September 28, 1994 session of Superior Court before the Honorable B. Craig Ellis, Judge Presiding.

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Q. Ms. Hunt, do you recall anything else that you said to Mr. Baker on that occasion during that meeting?

A. I told him what Larry had told me and Roger had told what they had told, and I had begged Larry. I said Larry, he was —

Q. I'm sorry, Ms. Hunt. I missed — you had what?

A. I had begged Larry.

Q. Begged Larry. Okay

A. He was going around telling Roger had killed Jackie. So I said Larry — and there was cops coming to the house then and they would — they would meet him down at Stocks in a blue Chevrolet and he would talk to them.

Supreme Court, U.S.
FILED
AUG 7 1997
CLERK

No. 97-69

In the

Supreme Court of the United States

October Term, 1997

HENRY LEE HUNT,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of North Carolina, Robeson County

BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE TRIAL COURT CORRECTLY DENIED PETITIONER'S *BRADY* CLAIM.

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No. 97-69

In the

Supreme Court of the United States

October Term, 1997

HENRY LEE HUNT,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of North Carolina, Robeson County

BRIEF IN OPPOSITION

The Respondent, State of North Carolina [hereinafter "State"], by and through the Attorney General of North Carolina, Michael F. Easley, and Special Deputy Attorney General G. Patrick Murphy, requests this Court deny the Petition For Writ of Certiorari filed by Petitioner Henry Lee Hunt, alias "Mule", alias "Mulehead", alias "Buck" [hereinafter "Hunt" or "Petitioner"], seeking review of the

decision of the Superior Court, Robeson County, the Honorable B. Craig Ellis presiding, denying Petitioner's post-conviction *Brady* claim.

CITATION TO OPINION BELOW

The Order of the Superior Court, Robeson County, denying Hunt's *Brady* claim is reprinted in an appendix to Hunt's petition. The Order of the Supreme Court of North Carolina denying Hunt's petition for writ of certiorari to review the Order of the Superior Court is also reprinted in Hunt's appendix and is reported at *State v. Hunt*, 485 S.E.2d 304 (N.C. 1997).

JURISDICTION
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Supreme Court Rules 15.2 and 24.2, these items are omitted since the Respondent is satisfied with Petitioner's Statement of Jurisdiction and Constitutional and Statutory Provisions Involved.

STATEMENT OF THE CASE

A. Procedural History

At the November 18, 1985 Session of Superior Court, Robeson County, Petitioner was convicted of two counts of first degree murder, N.C.G.S. § 14-17, and sentenced to death in each case. N.C.G.S. § 15A-2000. On direct appeal,

the Supreme Court of North Carolina affirmed Hunt's convictions and sentences. *State v. Hunt*, 323 N.C. 407, 373 S.E.2d 400 (1988). Hunt's petition for writ of certiorari to review the state court decision was granted in light of *McKoy v. North Carolina*, 494 U.S. 433 (1990), the judgments vacated and the case remanded for harmless error review of the penalty phase unanimity instruction. *Hunt v. North Carolina*, 494 U.S. 1022, 110 S. Ct. 1464, 108 L. E d. 2d 602 (1990). On remand, the Supreme Court of North Carolina found the penalty phase unanimity instruction harmless beyond a reasonable doubt and reinstated the judgments. Hunt's subsequent petition for writ of certiorari to review the state court's decision on remand was denied. *State v. Hunt*, 330 N.C. 501, 411 S.E.2d 806, *cert. denied*, 112 S. Ct. 3045, 120 L. Ed. 2d 913 (1992).

On December 3, 1992, Hunt filed a Motion For Appropriate Relief [hereinafter "MAR"] in Superior Court, Robeson County, pursuant to N.C.G.S. § 15A-1401, *et. seq.* The MAR raised numerous claims (Petitioner's Appendix at 3a-5a) including an allegation the Respondent failed "to disclose the fact that a witness saw A.R. Barnes leave the Mark IV Restaurant with Mr. Ransom [the first victim] shortly before Mr. Ransom supposedly was murdered." (Appendix at 1a-2a) The basis for this claim was *Brady v. Maryland*, 373 U.S. 83 (1963).

On June 2, 1994, the Superior Court entered an Order finding numerous claims in Hunt's MAR procedurally barred pursuant to N.C.G.S. § 15A-1419. Hunt's petition for writ of certiorari to review this Order was denied by the Supreme Court of North Carolina on August 10, 1994. *State v. Hunt*,

336 N.C. 783, 447 S.E.2d 436 (1994). The remaining claims were heard in Superior Court beginning September 30, 1994. At the close of the hearing, Hunt moved to amend his MAR to add the claim which is the subject of this petition. On September 16, 1996, the Honorable B. Craig Ellis entered an Order denying all claims in Hunt's MAR. Hunt's petition to review the Superior Court's Order was denied by the Supreme Court of North Carolina on April 10, 1997, *State v. Hunt*, 485 S.E.2d 304 (N.C. 1997). On July 9, 1997, Hunt's petition for writ of certiorari to review the part of the Superior Court's Order denying Hunt's amended *Brady* claim was docketed in this Court.

B. Factual Background

The Respondent's evidence at trial, relevant to this petition, showed that in the Summer of 1994 Dottie Ransom was married to two men, Rogers Locklear and Jackie Ransom. Dottie and Rogers discussed insuring Ransom's life, having him killed and using the policy proceeds to purchase a new home. Rogers testified that he first hired A.R. Barnes to kill Ransom, however, when A.R. did not carry out the plan, Rogers agreed to let A.R.'s brother, Elwell "Babe" Barnes, do the job for the agreed price, $2,000. Babe recruited Hunt and the two murdered Jackie Ransom on the evening of September 8, 1984. An autopsy showed Jackie died from a single .25 cal. gunshot wound to the head.

The next day, Rogers went to Hunt's mobile home. There, Hunt told Rogers, "I killed Jackie last night." Hunt then advised Rogers he wanted his money within 30 days or he would kill Rogers and Dottie. Ransom's body was found

in a wooded area of Lumberton later that day and Lumberton Police Department [hereinafter "LPD"] Detective Mike Stogner was assigned to the investigation. LPD requested the assistance of the State Bureau of Identification [SBI] and SBI Agent Lee Sampson was assigned. Between September 9 and September 14, 1984, the investigators were in contact with Larry Jones, an informant, concerning the murder of Jackie Ransom.

During the Summer and Fall of 1984, Hunt was living with Bernice Cummings, his girlfriend. Cummings testified at Hunt's trial that on September 10, she observed Hunt outside their residence speaking to one Buddy Row Bartley. Following the conversation, Hunt came inside and told her that Larry Jones was running his mouth, and that he "would put a stop to his damn mouth." At that time, Jones was living with Hunt's sister, Aggie Nora Hunt. Testimony at the MAR showed the investigators spoke to Jones several times between September 11 and 14 and on at least one occasion they went to Aggie Nora's house, identified themselves as law enforcement officers and asked her where they could locate Jones. (Appendix at 3a)

On September 14, Hunt told Cummings he was going to kill Jones because Jones was a "water-headed son-of-a bitch" going around running his mouth about Hunt having killed Ransom. Later that same day, Hunt's sisters, Aggie Nora and Annie Ruth, came to the residence of Cummings and Hunt. While there, Annie Ruth and Hunt went into a back room. When Hunt emerged, he said Jones was running his mouth and he was going to put a stop to it.

That evening, Hunt, Babe Barnes and Jerome Ratley dropped Cummings off at a bar and left the establishment in Cummings' vehicle. Ratley testified at trial that at Hunt's direction he drove to another location in Lumberton, picked up Larry Jones and on the pretext of obtaining marijuana the group traveled to Fairmont, North Carolina, a town approximately 10 miles from Lumberton. There, Hunt directed Ratley to drive to a secluded, wooded area where Ratley stopped the vehicle. When he did, Hunt turned towards the back seat and fired shots at Jones. When the shooting stopped, Ratley heard Hunt say, "You don't eat no more damn cheese for no damn body else. I'll meet you in heaven or hell, one." Wounded but not dead, Jones was pulled from the car. As Jones lay on the ground, Ratley heard him moan, "Mule, Mule, Mule." Hunt responded by firing additional shots into Jones' head. Hunt and Ratley then buried Jones' body in a shallow grave.

Hunt later gave the murder weapon, a .25 cal. Beretta, to his son-in-law to keep for him while Hunt was in prison on an unrelated drug charge. Ballistic tests established that the Baretta fired the bullets which killed each victim. Shell casings fired from the weapon were found on the ground at the location where Ratley said Jones was killed and a shell casing fired from the weapon was found in Cummings' vehicle. Additionally, prior to trial, Hunt sent a message to his brother, Wilbert, to get rid of Ratley as he, according to Hunt, was the only one who could really hurt him.

REASONS WHY PETITION SHOULD BE DENIED

I. THE SUPERIOR COURT PROPERLY DENIED HUNT'S *BRADY* CLAIM.

At the close of the MAR hearing, Hunt moved to amend his MAR to add an additional *Brady* claim. The evidence alleged to have been suppressed related to the fact Larry Jones, although working as an informant for law enforcement officers investigating the death of Jackie Ransom, never provided any information to them naming Hunt as Ransom's murderer. Hunt claims the Respondent's failure to disclose the fact Jones never named Hunt as the killer constitutes a *Brady* violation which requires a new trial. The Respondent contends Hunt's claim is meritless because: (1) the evidence (or lack thereof as the case may be) is not exculpatory or impeaching; (2) the evidence does not establish a *Brady* violation because there is no reasonable probability the information would have altered the outcome; and (3) both law enforcement officers who worked Jones as an informant testified at trial and were available to be questioned on this issue.

In *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 215, 83 S. Ct. 1194 (1963), this Court held "that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S. Ct. at 1196-1197. *See Kyles v. Whitley*, 514 U.S. 419, 131 L. Ed. 2d 490, 505, 115 S. Ct. 1555 (1995). In *United States v. Bagley*, 473 U.S. 667, 87 L. Ed. 2d 481, 105 S. Ct. 3375

(1985), the Supreme Court held that favorable evidence is material, and constitutional error results from its suppression, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial." *Bagley*, 473 U.S. at 678. The Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense. *Bagley*, 473 U.S. at 675, and n. 7. Showing the prosecution knew of an item of favorable evidence unknown to the defendant does not amount to a *Brady* violation, without more. *Kyles*, 131 L. Ed. 2d at 508. The materiality of the evidence under *Bagley* is to be considered collectively, not item by item. *Kyles*, 113 L. Ed. 2d at 509. Consequently, the evidence allegedly suppressed must be considered collectively with all the evidence in the case to determine whether the allegedly suppressed evidence undermines confidence in the outcome to the point the verdict is unworthy of confidence.

The trial court found that the nondisclosure of the fact Jones did not name Hunt as Ransom's murdered in conversations with Stogner and Sampson was not exculpatory. The trial court's conclusion is absolutely correct. Although exculpatory and impeachment evidence fall within the purview of *Brady*, neutral evidence does not. *United States v. Dillman*, 15 F.3d 384 (5th Cir. 1994); citing *United States v. Johnson*, 872 F.2d 612, 619 (5th Cir. 1989). *See United States v. Rhodes*, 569 F.2d 384, 388 (5th Cir.), *cert. denied*, 439 U.S. 844, 99 S. Ct. 138, 58 L. Ed. 2d 143 (1978) (holding prosecutor had no *Brady* duty to disclose that a

certain eyewitness could not positively identify the defendant). In *Dillman*, the Court held a witnesses' withheld statement - to the effect that she did not remember a meeting at which conspirators agreed to an illegal scheme - was neutral, not exculpatory or impeaching in nature. Another example of neutral evidence is found in *United States v. Zuno-Arce*, 44 F.3d 1420 (9th Cir. 1995). There, the defendant was convicted of conspiracy for his part in an international narcotics enterprise which resulted in the kidnapping, torture, interrogation and murder of a DEA agent. The defendant argued the prosecutor violated *Brady* by failing to disclose the statement of a witness who was present at the interrogation of the victim. In the statement, the witness failed to name the defendant as one of several persons present during the interrogation. Defendant argued the failure to name him as present tended to show he was not there. The court rejected this argument. Not every witness who fails to inculpate a defendant should be treated as exculpatory. *Id.* at 1426. *See United States v. Bryan*, 868 F.2d 1032, 1037 (9th Cir.), *cert. denied*, 493 U.S. 858, 110 S. Ct. 167, 107 L. Ed. 2d 124 (1989). This Court has held that due process does not require the State to make complete disclosure to the defendant of all of the investigative work on a case. *Moore v. Illinois*, 408 U.S. 786, 33 L. Ed. 2d 706, *reh'g denied*, 409 U.S. 897, 34 L. Ed. 2d 155 (1972). If information or evidence is not exculpatory, the State need not produce the same. To hold otherwise would impose an insuperable burden on the State to determine what facially non-exculpatory evidence might possibly be favorable to the accused by inferential reasoning. *United States v. Comosona*, 848 F.2d 1110, 1115 (10th Cir. 1988).

Hunt accuses the trial court of taking "much too narrow a view of 'evidence favorable to the accused'." (Petition at p. 7) The opposite is true, Hunt takes much too broad a view. Under the standard Hunt supports any evidence which is not inculpatory by his view is exculpatory or favorable. This simply is not true. The authorities cited above recognize neutral evidence is not covered by the *Brady* umbrella.

Hunt first argues the failure of Jones to name Hunt in discussions with investigators undermines the Respondent's theory regarding Hunt's motive to murder Jones. It is true the Respondent's theory was that the killing of Jones was a witness elimination murder, however, Jones' failure to name Hunt as Ransom's murderer does nothing to impeach this theory or the Respondent's evidence. Cummings testified to several statements Hunt made concerning his intent to "shut Jones' mouth." Jerome Ratley witnessed the murder and testified Hunt stated immediately afterwards, "You don't eat no more damn cheese for no damn body else. I'll meet you in heaven or hell one." Jones was living with Hunt's sister at the time and the investigator's interest in Jones did not go unnoticed by Aggie Nora or Hunt. It is wholly unremarkable that Jones did not name Hunt to investigators. Detective Stogner testified at the MAR he believed Jones "was playing [him] as informants will do." Jones wanted "a reward for information that he may know about the case, and I refused to give him one because I felt like he was playing me." (Appendix at 4a-5a) Under Hunt's theory, if a person made a particular statement to nine people but did not mention it to the tenth, the failure to do so is exculpatory. Suffice it to say, the trial court was correct in concluding the failure to name

Hunt as Ransom's murderer was not exculpatory evidence within the meaning of *Brady*.

Hunt next contends the information would have bolstered the testimony of Aggie Nora. The problem is Aggie Nora did not testify at trial so there was nothing to bolster. Hunt's trial counsel testified at the MAR that Aggie Nora did not want to testify at trial and that he was concerned putting her on the stand would corroborate the State's evidence that she was discussing Jones' contacts with law enforcement with Hunt. (Petitioner's Appendix at 37a) Thus, Hunt's argument that the evidence would have corroborated or bolstered the testimony of Aggie Nora is meritless.

Any impeachment value of the evidence as it relates to the testimony of Cummings would have been *de minimis*. Notwithstanding the benign nature of the evidence, the evidence would have added virtually nothing to the commendable job trial counsel did during cross-examination of Cummings. (Petitioner's Appendix at 84a) (Counsel's cross-examination of State's witnesses was entirely competent and brought considerable impeaching information to the attention of the jury).

Finally, there is no chance the evidence in question would have made any difference in this case. Stated another way, the evidence does not undermine confidence in the verdict. The facts of the murders are outlined in detail in the trial court's Order. (Petitioner's Appendix at 5a-21a) As stated by the Supreme Court of North Carolina on remand, "[s]imply put, the evidence of defendant's guilt in this case is

overwhelming." *State v. Hunt*, 330 N.C. 501, 411 S.E.2d 806, *cert denied*, 112 S. Ct. 3045, 120 L. Ed. 2d 913 (1992).

CONCLUSION

This Court's due process analysis applicable to *Brady* claims is well-established and the issue in this case would add nothing to the jurisprudence in this area of the law. The trial court's conclusion is correct that the evidence in question is not exculpatory. Nonetheless, the overwhelming evidence of guilt firmly demonstrates the result of Hunt's trial is solidly reliable. Hunt has failed to establish a *Brady* violation so Respondent respectfully requests this Court deny Hunt's petition.

Respectfully submitted, this 8th day of August, 1997.

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APPENDIX

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Testimony of LPD Detective
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Claim IV of Hunt's MAR

IV. THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCE.

180. The State's failure to disclose the fact that a witness saw A.R. Barnes leave the Mark IV Restaurant with Mr. Ransom shortly before Mr. Ransom supposedly was murdered violated Mr. Hunt's right to due process and a fair trial under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), and subsequent cases; it was in specific violation of his rights under the Fifth and Fourteenth Amendments to the Constitution of the United States and of Article I, Sections 19 and 36 of the Constitution of the State of North Carolina.

181. The State was required to disclose to Mr. Hunt's counsel all exculpatory evidence known to it. In addition, counsel made a request for discovery pursuant to N.C. Gen. Stat. § 15A-902 prior to trial. In response to that request, the State provided Mr. Hunt's counsel with access to various items, including copies of A.R. Barnes's confessions made to the investigating officers.

182. At no time did the State disclose to Mr. Hunt's counsel that a witness had reported to the police that A.R. Barnes had been seen with Mr. Ransom shortly before he was murdered, although this fact was disclosed to the newspapers. (*See* Affidavit of Jay Holtmeier ("Holtmeier Aff."), sworn to December 2, 1992, attached hereto as Appendix C).

183. This evidence, especially the identity of the witness, would likely have been of great importance to Mr.

Hunt's counsel, tending to corroborate Mr. Barnes's confession. Under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), and subsequent cases, the evidence was required to be disclosed to Mr. Hunt's counsel if it was exculpatory. There can be no doubt that it was.

184. It is beyond question that the failure to disclose this exculpatory evidence worked to Mr. Hunt's extreme prejudice. There were other examples of *Brady* violations each of which deprived Mr. Hunt of significant information that he could have used in his defense.

Testimony of SBI Special Agent Lee Sampson

Q. Let me ask you some more about Mr. Jones and your context with him. Before the break, I was asking you had you ever been over to Aggie Nora's house in reference to talking with Mr. Larry Jones between September 11th and September 14th of 1984?

A. Yes, I did, along with Detective Stogner.

Q. All right. So you went over and talked with Aggie Nora – Aggie Nora Hunt?

A. I'm not sure. Our purpose there was to find Larry Jones but she was at the residence. It's her residence.

Q. Did you actually see her?

A. Yes, we did.

Q. And you were there looking for Larry Jones?

A. Yes. We talked with her and asked her if Larry was there, and she got him for us.

Q. Okay. So she -- she at least knew -- did you identify yourself as law enforcement officers or anything?

A. Yes, we did.

Q. So she knew some law enforcement officers wanted to talk to Larry Jones?

A. That's correct.

Q. And you know, of course, Larry Jones was living with Aggie Nora during that time?

A. Yes, he was.

Testimony of Michael Stogner

Q. -- between Jackie Ransom's death and Larry Jones' disappearance?

A. I may have asked her if he had told her anything. If he had told me anything, I certainly would not have told her --

Q. Okay.

A. -- what he had told me.

Q. So your recollection is that you wouldn't have told Aggie Nora Hunt anything that Larry Jones had told you?

A. No, sir, absolutely not.

Q. Okay. After Larry Jones disappeared, did you -- did you go back to Aggie Nora Hunt's house and ask her any questions about what had gone on in the week between these two incidents, between Jackie Ransom's death on the 8th or the 9th and Larry Jones' disappearance a week later?

A. The last time I spoke with Larry Jones, and I remember it distinctly, was that Friday before he was killed, that afternoon, late that afternoon. And he got very upset with me because he wanted a reward for information that he may know about the case, and I refused to give him one because I felt like he was playing me as -- as informants will do sometimes, and I refused to give him one.

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